FIVE
MODERN CONSTITUTIONS MADE EASY

IN QUESTIONS AND ANSWERS

CONTAINING

INDIAN CONSTITUTION · ENGLISH CONSTITUTION
SWISS CONSTITUTION · AMERICAN CONSTITUTION
RUSSIAN CONSTITUTION

BY
Dr. VIDYA DHAR MAHAJAN
M. A. (Political Science & History) Ph. D. LL. B.
Professor of Politics, Punjab University College, New Delhi.

PURI BROTHERS
BOOK-SELLERS & PUBLISHERS
38 Jawahar Nagar, DELHI-6.

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Printed by Mr. Baldev Raj Sethi at the National Printing Press, Basti Punjabian Subzimandi, Delhi and Published by Puri Brothers Booksellers and Publishers 38 Jawahar Nagar Delhi.

The Constitution Of India

CHAPTER I

Introductory

☞ Q. 1 What are the salient features of the new Constitution of India ?

Ans There are certain leading characteristics of the new Constitution of India In the first place, the Indian Constitution is a written one It has 395 Articles and 8 Schedules It is the lengthiest constitution which the world has so far produced Its bulk is due to many factors The constitution embodies not only the broad principles but also the details of the administrative machinery In the case of the U S A., the constitution provides only for the Federal Government, but in the case of India the constitution provides both for the Union Government and the units India is a vast country and its units have their peculiar problems. Adequate provisions had to be made to reconcile the conflicting interests of the units Moreover, detailed provisions had to be made for the transitional period on account of the peculiar position of the Indian States Thus, the constitution had to provide for what are known as Part A, Part B, Part C and Part D states Circumstances also demanded the incorporation of special provisions for the protection of the Scheduled Castes and the Scheduled Tribes The authors of the constitution had also to provide for the fundamental rights and the directive principles of state policy, As a matter of fact, the fathers of the Indian Constitution tried to incorporate into the constitution all that the experience of the world had shown to be essential for the administration of a progressive state No wonder, the Indian Constitution is a long one

(2) Another feature of the Indian Constitution is its flexibility. It is true that the Indian Constitution is a Federal one and consequently a written one also The

process of amendment of the constitution is simple and not very difficult though it requires special majorities. It does not need the use of the initiative or the referendum as in Switzerland The amendment can be made by the Central Legislature without the need of ratification by any other body except in a very few cases In normal times, the Centre has the right to direct the policy of the state Governments so that there may be a uniform system of administration Moreover, in times of emergency, the federal constitution of India can be transformed into a unitary one in order to meet the situation No wonder, Pt Jawahar Lal Nehru made the following observations: "While we want this constitution to be as solid and permanent as we can make it, there is no permanence in constitution There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital, organic people"

(3) Another feature of the Indian constitution is its federal character Like all other federal constitutions, the Indian constitution provides for a division of powers between the Union centre and the units and the supremacy of the judiciary Seventh Schedule of the constitution provides for the Union List consisting of 97 items, State List consisting of 66 items and the Concurrent List consisting of 47 items The Supreme Court is to act as the watch-dog of the Constitution

But it is to be noted that the Union centre has been made very strong The Union List contains almost all the important subjects which concern the country as a whole The Concurrent List also gives a lot of authority to the Union Government. In times of emergency, the very nature of the constitution undergoes a change The State Legislatures and their ministries are put on the shelf and all power comes into the hands of the Governors as the representatives of the President of India In other words, everything is directed from the Centre. Moreover, the residuary powers are also to be exercised by the

Union Government The states have no say in this matter Thus, the Indian constitution is a unique combinations of the federal and unitary systems in the world.

(4) The new constitution of India emphasises the sovereignty of the people of India. The constitution declares India to be a Sovereign Democratic Republic There is to be no hereditary kingship The Indian President is to be elected for a number of years He can be impeached during his tenure of office All power is to come from the people and is to be exercised in such a way that the people of India have justice, liberty, equality and fraternity

It is true that the Indian constitution provides for an elected President, but this does not mean that India has a presidential form of government As a matter of fact, there is complete parliamentary government at the Centre. The Indian President can be compared to the King of England He is merely to act in a constitutional capacity. He is to act on the advice of his ministers and the real power at the Centre rests in the hands of the Prime Minister and his Cabinet But that is not so in the case of the states It is true that ordinarily the Governor is to act as a constitutional head according to the advice of the ministers But in certain cases he has been authorised to act in his discretion This thing is a remnant of the Government of India Act 1935. The exercise of discretionary powers by the Governor is the negation of the parliamentary form of government Moreover, in times of emergency, the President is authorised to suspend the constitution of the state or the states and take over all the powers in his own hands Under such circumstances, it can hardly be said that a parliamentary form of government has been provided for the states No wonder, it has been said that the Indian Constitution provides for a Parliamentary-cum-Presidental form of Government

(5) Another characteristic of the Indian constitution is the incorporation of the fundamental rights into the

constitution. Those rights are given in Articles 12 to 35 of the constitution. Those rights are right to equality, right to particular freedoms, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies Right to equality implies equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, equality of opportunity in matters of public employment, and abolition of titles Right to freedom implies the right to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of India, to acquire, hold and dispose of property and to practise any profession or to carry on any occupation, trade or business.

It is to be noted that the fundamental rights embodied in the Indian Constitution are not mere declarations of absolute principles Those rights have been made **justiciable** This means that if they are violated, it is the duty of the Courts to safe-guard them Any law of the legislature and any act of the government is unconstitutional if it conflicts with any fundamental right But it is to be noted that these rights can be suspended during the period of emergency While the importance of the fundamental rights to the individuals is not denied. the security of the state has also not been ignored.

(6) Another novel feature of the constitution is the provision of Directive Principles of State policy in Part IV of the Constitution Thus it is provided that the state is to secure a social order for the promotion of welfare of the people Every citizen has the right to adequate means of livelihood There is to be equitable distribution of the material resources of the country for the common good Every person is to receive equal pay for equal work The children are to be protected from exploitation and moral and material abandonment The state is to organise village Panchayats as units of self-government.

Every citizen is to have right to work, to education and to public assistance in certain cases. The State is to make provision for just and humane conditions of work and maternity relief. The state is to see that all workers get a living wage. The state should aim at a uniform Civil Code for the citizens It is the duty of the State to promote educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections of the people. It is the duty of the State to raise the level of nutrition and the standard of living of the people and also to improve the public health The State is to protect monuments, and places and objects of national importance. The State has to separate the judiciary from the executive. Finally, the State has to promote international peace and security.

Critics point out that the Directive Principles of State Policy are worse than useless They are not worth the paper on which they have been written The authors of the constitution merely wasted their time while drafting them or discussing them The people can take no action against the government if it does nothing to fulfil any of the provisions given in Part IV. But it cannot be denied that no government which aims at winning and maintaining the goodwill and co-operation of the people, will be able to ignore or act against the provisions given in the Directive Principles of State Policy

(7) The American constitution provides for the equality of representation of the units of the federation in the Senate But in the case of India, Fourth Schedule of the constitution provides that the number of members from the states for the Council of States or the Upper House will vary fram 1 to 31.

(8) In the case of U. S. A., the Federal Government has its own separate administrative machinery in the units or the states, In the case of India, the Supreme Court and the High Courts form one single integrated judicial system. It is the duty of these courts to administer the law of the country whether that law has been

passed by the Parliament or the State Legislatures.

(9) In the case of other Federations, there is double citizenship There is the citizenship of the Union and the citizenship of each unit. This is the case in the U S. A, Switzerland and other countries. But in the case of India, there is to be only one single citizenship and that is the Union citizenship. There is no state citizenship of the Punjab, Uttar Pradesh or Bihar The same applies to other states

(10) Another feature of the new constitution is the provision of a Secular State There is to be complete freedom from religious or communal bias. There is to be no state religion The state is not to help the propagation of any particular religion.

(11) Another special feature of the new constitution is the abolition of communal electorates The fathers of the constitution seem to have learnt from their past experiences. In the interests of national solidarity, it has been found essential that there should be no voting on communal lines Only a few seats have been reserved for some time for the Anglo-Indians and the Scheduled Castes

(12) Another feature is the provision for adult franchise Every man and woman of 21 years of age has been given the right to vote India is to witness the greatest experiment in democracy.

(13) Another feature of the new constitution is she integration of the Indian States with the rest of India under the same constitution. It has been rightly said that "our new constitution is not an alliance between democracies and dynasties, but a real union of the Indian people built on the basic concept of the sovereignty of the people."

☞ Q. 2. What is the method of amendment of the Indian Constitution and what changes have been made by the first amendment to the Constitution ?

Ans The Indian Constitution lays down three different methods for the amendment of different provisions of the Constitution In the first place, a very large number of the provisions can be amended by the Union Parliament by a simple majority This is so in the case of the creation of a new state or reconstitution of existing states, the creation or abolition of Upper Chambers in the States, the constitution of centrally administered areas and the administration of Scheduled Areas and Scheduled Tribes

2 Secondly, a Bill for the amendment of Constitution may be passed by two-thirds majority of either House of Parliament and also ratified by the Legislatures of half of the States This procedure is applicable in the case of the election of the President, the executive power of the Union and the States, the Supreme Court and the High Courts, the distribution of legislative powers between the Union and the states and the representation of states in Parliament

3. The remaining provisions of the Constitution can be amended by the Parliament by a majority of two-thirds of the members of each House present and voting No ratification by the legislatures of the States is required for these amendments

The First Amendment Act of 1951

The present constitution of India came into force on 26th January, 1950 and the first Amendment Act was passed on 18th June, 1951 There were many causes which forced the amendment of the constitution although there was a lot of opposition to the amendment of the Constitution within so short a period It was found from experience that the right of freedom of speech and expression as given by the Article 19(a) was held by some courts to be so comprehensive that an action should be taken against an individual who advocated murder and other violent crimes It was found necessary to clarify the right of citizen to practise any profession or to carry on any occupation, trade or business Article 31 also presented certain difficulties Many state legislatures passed laws by which they abolished landlordism These laws were

held to be ultra vires by certain High Courts. It was considered necessary to amend the Constitution in such a way that progressive legislation in the agrarian field may not be stopped by courts on the plea that these laws violated the constitution It was also found necessary that special provision should be made for the educational, economic or social development of the backward classes

Changes made by 1st Amendment.

1 Article 15 of the Constitution had provided that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them Provision had been made for special treatment of women and children The amendment adds a new clause which runs thus "(4) Nothing in this Article or in clause (2) of Article 39 shall prevent the state from making any special provisions for the advancement of any socially backward classes of citizens or for the Scheduled Castes, and the Scheduled Tribes" The new amendment enables the state to make special provisions for the advancement of the educationally, economically and socially backward classes

2 Article 19 has also been amended Before amendment, the right of freedom of speech and expression was subject to all laws relating to libel, slander and defamation, contempt of court, any matter which offends against deceny or morality, or which undermines the security of the state or tends to over-throw the state According to the amended Article, the right of freedom of speech and expression is subject to all laws imposing restrictions with regard to the security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence

3 In order to help the cause of agrarian reform in the country, a new Article 31 A has been added. According to this, no law providing for the acquisition by the state of any estate or of any rights therein or for the extinguishment or modification of any such rights therein or for the extinguish-

ment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the provisions of the constitution relating to fundamental rights If any such law is made by the legislature of a state, it must be reserved for the consideration of the President, and must receive his assent

4 Under Article 85 of the Constitution before its amendment, Houses of Parliament had to be summoned to meet at least twice in every year. According to the amendment, the Houses shall be summoned to meet, but it may be once only in one year or two years However, six months should not intervene between the ending of its first session and the meeting of the next session Formerly, there had to be two sittings in one year of the Houses of Parliament and consequently two prorogations were also necessary But this is not so after amendment Similar changes have been made in Article 174 which deals with the sessions of the state legislatures

5 According to Article 87, at the commencement of every session, the President had to adress both Houses of Parliament assembled together and inform Parliament of the causes of its summoning According to the amendment, President is required to address only at the commencement of first session after each General Election to the House of the People. Similar changes have been made in Article 176 which deals with address by the Governor or Rajpramukh

☞Q 3 How far is it true to say that India is over-centralised ?

Ans. It cannot be denied that the Union Government under the new constitution has been deliberately made very strong One of the very important reasons given for this is that the fathers of the constitution could not trust the sense of partiotism of the people living in different parts of the country It was feared that if any provincial government decided to become independent, there should be certain powers with the central government to stop the process of distintegration The strong Centre in the new constitution can be understood only in the background of

Pakistan If the Canadian constitution provided for a strong central government on account of the lessons of Civil War in the U S A, the framers of the Indian Constitution also provided for a strong government at the centre in order to counteract any centrifugal tendencies that might appear in India in the future. No wonder, the state governments forgetful of the exigencies of the situation, complain that India is over-centralised

Under the constitution, the Union list contains almost all the important items which can make the central government strong The Concurrent List also contains many items The residuary powers are also left with Union Government The Governors of Parts A States, Chief Commissioners of Part C States and the Rajpramukhs of Part B States are to be appointed or approved by the Central Government The emergency provisions in the Constitution enable the Union Government to take over the administration of any state into its own hands Such a thing has already been done in the Punjab where the President's rule is in full swing. In many cases, the Constitution can be amended with the consent of the federation.

Article 249 of the Constitution permits the Parliament to legislate on any matter in the State List if the Council of States passes the resolution by a two-thirds majority declaring such matter or matters to be of national importance and interest

Articles 250 empowers the Union Parliament to legislate for the whole of India or any part of India on any matter in the State List during the period of proclaimed emergency

The Union Parliament can legislate for the whole of India or any part of India on any matter in the Union, State or Concurrent List to give effect to any treaty, agreement or convention with any foreign power

Any State Law which is repugnant to a Union Law on a subject on which the Union Parliament is competent to legislate, is void to the extent of its repugnancy.

The Union Government has a lot of administrative control over the units. Article 256 provides that the executive powers of the state shall be so exercised as to ensure compliance with the laws of Parliament The executive authority of the Union extends to the issuing of such directions to the States as the Union Government considers necessary. The President can issue such directions to the executive authority of a State as will ensure that the State executive will not impede or prejudice the exercise of the executive authority of the Union President can also issue directions to the States for the protection, maintenance and construction of the means of communications declared by him to be of national importance and for the protection of railways or national Waterways. President can delegate the administration of any matter within the executive power of the Union to the Government of a State or its officers to work as agents of the Union Government Part B States are allowed to retain their armed forces until the Parliament otherwise provides, but these armed forces will be a part and parcel of the armed forces of the Union Parliament is empowered to make laws for the adjudication of disputes connected with inter-state rivers or river-valleys It can ban the jurisdiction of any Court including the Supreme Court on such disputes President can establish an Inter-State Council for co-ordinating the activities of the States, promoting co-operation and resolving disputes between them If any state fails to carry out the lawful directions of the Union Government. that can be taken by the President as an act constituting a failure of the Constitutional Machinery in that State and justify the supersession of the authority of the State

On the question of over-centralization, Dr Ambedkar has made the following observations -

"A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the constitution contrives to do

"As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which

it rests The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself This is what the Constitution does The States are in no way dependent upon the Centre for their legislative or executive authority The States and the Centre are co-equal in this matter.

"It is difficult to see how such a Constitution can be called centralism It may be that the Constitution assigns to the Centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal Constitution It may be that the residuary powers are given to the Centre and not to the States But these features do not form the essence of federalism

"The chief mark of federalism lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied is our Constitution There can be no mistake about it It is, therefore, wrong to say that the States have been placed under the Centre The Centre cannot by its own will alter the boundary of this partition Nor can the judiciary For as has been well said —

'Courts may modify, they cannot replace. They can revise ealier interpretations as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot re-allocate They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another '

'The first charge of centralization defeating federalism must therefore fall

"The second charge of centralization is that the Centre has been given the power to override the States This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind

"The first is that these overriding powers are not the normal features of the Constitution Their use and operation are expressly confined to emergencies only The second consideration is . Could we avoid giving overriding power to the Centre when an emergency has arisen ? Those who do not admit the justification for such overriding powers to the Centre even in an emergency, do not seem to have a clear idea of the problem which lies at the root of the matter

"The solution of this problem depends upon one's answer to this question which is the crux of the problem There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must lie to the Centre and not to the Constituent States For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to the Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the Constituent State by these emergency powers ? No more than this that in an emergency, they should take into consideration alongside their own local interests, the opinion and interests of the nations as a whole"

CHAPTER II

Citizenship

Q 4 What is the law of Citizenship under the New Constitution of India?

Ans The first thing to be noticed regarding the law of citizenship in India is that although India is a Federation, there is no dual citizenship. The Constitution embodies the principle of single citizenship for the whole of India Consequencly, the rights, privileges and obligations of the Indian Citizens are the same all over India.

The law regarding Indian citizenship is to be found in Part II of the Constitution While Articles 5 to 9 lay down the present law on the subject, Article 11 specifically provides that nothing in these Articles shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters

relating to citizenship.

As regards the present law, every person who has his domicile in the territory of India and who was born in the territory of India, or either of whose parents was born in the territory of India, or who has ordinarily been resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution, shall be a citizen of India

Any person who has migrated to India from the territory now included in Pakistan shall be deemed to be a citizen of India, if he or either of his parents or any of his grand-parents was born in India, and if he migrated before 19th July, 1948 and has been ordinarily resident in India since the date of his migration If any person has migrated to India on or after 19th July, 1948 he must be registered as a citizen of India by an officer appointed by the Government of India No person is to be registered unless he has been resident in India for at least six months immediately preceding the date of his application for registration

A person who has migrated from India to Pakistan after 1st March, 1947 shall not be a citizen of India But if a person who after migrating to Pakistan, has returned to India under a permit for resettlement or permanent return, he shall be a citizen of India

As regards persons of Indian origin residing outside India, it is specifically provided by Article 8 that any person who or either of whose parents or any of whose grand-parents was born in India, and who is ordinarily residing in any country outside India, shall be deemed to be a citizen of India if he has been registered as a citizen of India by the Diplomatic or Consular representative of India in the country where he is residing, on an application made by him

Article 9 says that no person shall be a citizen of India if he voluntarily acquires the citizenship of any foreign state

CHAPTER III

Fuudamental Rights

☞ Q. 5 What are the fundamental rights provided in the Indian Constitution ?

Ans Part III of the Indian Constitution deals with the fundamental rights which have been guaranteed to every Indian citizen Article 13 provides that all laws which are in force in India before the commencement of the constitution shall become void to the extent to which they are inconsistent with the fundamental rights No law will be passed which is against any fundamental right or in any way infringes any fundemental right The rights guaranteed under the constitution are the rights to equality, right to freedom, right to freedom of religion, right against exploitation, cultural and education right, right to property and right to constitutional remedies

RIGHT TO EQUALITY

Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them Likewise, on the same ground, no citizen shall be subject to any disability, liability, restriction or condition with regard to access to shops, hotels and places of public entertainment, or the use of wells, tanks, bathing ghats, roads and places of public resort Every citizen shall be guaranteed equal opportunity in matters of public employment There shall be no discrimination or ineligibility on grounds of religion, race, caste, sex, descent, place of birth or residence But certain jobs may be reserved for the backward classes which are not adequately represented in Services

Untouchability is abolished by Article 17 and its enforcement is made punishable under the law of the country No title shall be conferred by the State excepting military or academic titles No Indian citizen is to accept any title from any foreign State. Any person who is not a citizen of India, but holds any office of profit or trust under the Indian Government, will not accept any present or emolument or office of any kind from any foreign state without the consent of the President.

RIGHT TO FREEDOM

Article 19 lays down that all citizens shall have the right to freedom of speech and expression, the right to assemble peaceably and without arms, the right to form associations or unions, the right to move freely throughout the territory of India, the right to reside and settle in any part of the territory of India, the right to acquire, hold and dispose of property, and the right to practise any profession, or to carry on any occupation, trade or business. These rights are not absolute Article 19 puts many restrictions on them in the interests of the Scheduled Tribes etc Article 20 provides that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence. He will not be subjected to any penalty which is greater than that which could be inflicted under the law in force at the time of commission of the offence No person shall be prosecuted and punished for the same offence more than once No person accused of an offence shall be compelled to be a witness against himself. No person shall be deprived of his life or personal liberty except according to procedure established by law Article 22 guarantees protection against arrest and detention in certain cases. If any person is detained for more than three months, his case will be placed before an Advisory Board who will decide as to whether there is any sufficient cause for detention or not. But Parliament may by law prescribe the circumstances under which, and the cases in which a person may be detained for more than three months without obtaining the opinion of Advisory Board

Article 23 prohibits traffic in human beings and forced labour of any kind But this will not prevent the State from imposing compulsory service for public purposes No child below the age of 14 shall be employed to work in any factory or mine or engaged in any other dangerous employment.

Right to Freedom of Religion.

Article 25 provides that all persons are equally entitled to freedom of conscience and the right freely to profess, practise

and propagate religion The only restriction is that religious freedom should not interfere with public order, morality and health. The State may also pass laws which regulate or restrict any economic, financial, political or other secular activity which may be associated with any religion The state can also pass law to throw open Hindu religious institutions of a public character to all classes and sections of the Hindus Every religious denomination shall have the right to establish and maintain institutions for religious and charitable purposes to manage its own affairs in matters of religion, to own and acquire movable and immovable property, and to administer such property in accordance with law No person shall be compelled to pay any tax for the promotion of any particular religion No religious instruction shall be provided in any educational institution wholly maintained out of state funds No person attending any educational institution recognised by the state or receiving aid out of state funds shall be required to take part in any religious instruction that may be given in such institutions or to attend any religious worship that may be conducted there.

Cultural and Educational Rights

Minorities having a distinct language, script or culture of their own shall have the right to protect the same No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The state will not show any discrimination while giving grants to educational institutions.

Right to Property

No person shall be deprived of his property save by authority of law No property shall be acquired for public purposes without providing for compensation for that property. If any law is made for that purpose, it does not become effective unless the consent of the President is taken But these provisions do not apply to those laws which were passed 18 months before the commencement of the constitution.

enforce the fundamental rights The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari which may be appropriate for the enforcement of the fundamental rights Parliament has been given the power to empower by law any other Court to exercise all or any of the powers given to the Supreme Court These rights are to be suspended only when a state of emergency is proclaimed by the President Parliament is given the power to decide as to what extent the fundamental rights given by the constitution should be restricted in their application to the members of the Armed Forces in order to ensure the proper discharge of their duties and maintenance of discipline among them.

A few general observations may be made on the question of fundamental rights as given in the constitution In the case of the U S. A., the fundamental rights guaranteed by the constitution are absolute. They are immutable They are above the Constitution and cannot be abridged or suspended or abolished In such circumstances, the Government is usually powerless in times of emergency Moreover, even a little inferference with those fundamental rights leads to litigation and the executive is at the mercy of the Supreme Court In some other countries, fundamental rights are given but no provisions have been made for their enforcement The result is that those fundamental rights are mere paper declarations and the citizens do not derive any benefit out of them

In case of the Indian Constitution, there are no absolute rights A perusal of the relevant Articles will show that many limitations have been put on them in the interests of public order and public morality. Moreover, the fundamental rights in the Constitution are not above the Constitution Whenever there is a conflict between the fundamental rights of the individuals and the security of the State, the latter

has been given the first place It is specifically provided that in times of emergency, the President can by an executive order suspend all or any of the fundamental rights in the whole of India or any part of India The power of the President to declare an emergency is absolute and uncontrolled. He is the sole judge to decide whether a grave emergency exists or not In normal times, the Constitutional remedies for the enforcement of the fundamental rights cannot be suspended by Parliament without the amendment of the Constitution Any person whose fundamental right has been infringed can move the Supreme Court or the High Court to enforce his rights because the rights under the Indian Constitution are justiciable It is in this respect that the fundamental rights differ from the Directive Principles of State policy as laid down in the Constitution

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☞Q 6. What are the Constitutional remedies for the enforcement of the fundamental rights as provided in the Indian Constitution ?

Ans.—Prof : Dicey was right when he said that fundamental rights are useless unless there are adequate provisions to enforce them Consequently, the fathers of the Indian Constitution have provided for adequate means for the enforcement of the fundamental rights

Article 32 of the Constitution guarantees to every citizen the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights given in Part III. The Supreme Court is also given the power to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, whichever may be appropriate, for the enforcement of any of the fundamental rights. Parliament has been given the authority to empower by law any other Court to exercise all or any of the powers exercisable by the Supreme Court It is clear that the jurisdiction of the Supreme Court and the other Courts is concurrent.

The issuing of writ of Habeas Corpus helps the individual who has been wrongfully detained, to get back his liberty. The writ of Mandamus enables the Superior Court to order inferior court to do a particular thing. The writ of prohibition will enable the superior courts to prevent the inferior court from exceeding their jurisdiction or doing things which are irregular according to law. Likewise, the writ of Certiorari will prevent inferior courts from exceeding their proper functions

But it is to be noted that the constitutional remedies are not absolute Article 34 provides that the Parliament, by law, may indemnify any person in the service of Union, or of a state or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forefeiture ordered or other act done under martial law in such area. It is to be noted that this power can be exercised by Parliament subject to two conditions. The first condition is that the act done must be in connection with the maintenance or restoration of order. The second condition is that the martial law must be in force in the area where the act is done.

Article 33 provides that Parliament shall have the power to determine as to what extent the fundamental rights should be restricted or abrogated in their application to the members of the Armed Forces The object of this restriction is to ensure the proper discharge of their duties and maintenance of discipline among the Armed Forces

Article 359 provides that where a proclamation of emergency is in operation, the President may by order declare that the right to move any court for the enforcement of any fundamental right or rights mentioned in the order and all proceedings pending in any court for the enforcement of those rights shall remain suspended

during the period the proclamation is in force or for a shorter period Any order made may extend to the whole of India or any part of India As soon as possible, every order made by President shall be laid before each House of Parliament It is to be noted that the power of the President to declare emergency is absolute and uncontrolled He is the sole judge to decide whether a grave emergency exists or not By the issuing of merely an executive order, President can suspend the basic guarantees It cannot be denied that such absolute and unlimited powers of the President are open to abuse, but it has been considered necessary to give these powers to the President in the higher interests of the safet of the State **The Constitutional remedies cannot be suspended by Parliament in normal times without the amendment of the constitution** This has actually been done by the Government with regard to the question of the abolition of Jagirdari system which conflicted with the fundamental right to property. However, a proclamation of emergency ceases to operate at the expiry of two months unless before that period it has been approved by resolutions of both Houses of Parliament. This means that Constitutional remedies can be suspended by President for two months and for a longer period by Parliament.

It is to be noted that the prohibitions against fundamental rights apply not only to the Parliament and the Government of the Union but also to the State Legislatures and the State Governments They also apply against the officials and other authorities Some of the prohibitions are directed against the individuals.

Parliament has been given the exclusive right to provide for matters regarding fundamental rights and also prescribe punishments for acts which are declared offences This will secure uniformity of treatment and equal enjoyment of rights by all citizens throughout India

Q 7. Write short notes on the following :

Writ of Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto.

Ans (i) *Habeas Corpus* (*"you may have the body"*).

A writ of Habeas Corpus is the most celebrated prerogative writ. It has been the corner-stone of Anglo-American liberty. The object of a writ of Habeas Corpus is to see that no person is wrongfully deprived of his personal liberty. Whenever any person is arrested, anybody can set the machinery of justice in motion by notice of motion or application supported by an affidavit of facts The Court issues a writ to the person or the authority having the arrested person in custody to produce that person before it and justify the detention or arrest of the person If the Court is not satisfied regarding the legality and propriety of the arrest or detention, it orders the release of the person concerned Thus, the writ of Habeas Corpus is the primary procedure by which a person who has been improperly deprived of his personal liberty, can regain it. It also ensures that the accused will be brought to trial within a reasonable time. The writ of Habeas Corpus is of a remedial nature and cannot be used for purposes of punishment. A writ of Habeas Corpus is ineffective if the illegal detention has ended before the making of the application for the issue of a writ The writ is not issued if the person or authority concerned has de facto ceased to have the custody of the the person concerned Section 491 Cr P. C also provides for the issue of a writ of Habeas Corpus The issue of a writ of Habeas Corpus under Article 32 of the Indian Constitution is an additional right.

Right to Constitutional Remedies.

Article 32 gives the Right to move the Supreme Court to

(ii) Mandamus ("We Command").

A writ of Mandamus is a high prerogative right of a most extensive remedial nature Under Article 32 of the Indian Constitution, it is to be issued by the Supreme Court the High Courts and any other Court which may be empowered for that purpose by the Indian Parliament Formerly, such a writ was issued only by the Presidency High Courts

A writ of Mandamus is a command, issued by a superior Court, directing any person, corporation, or any inferior court, to do some particular thing specified in the order which pertains to his or their office and is in the nature of public duty. Such a writ is used principally for public purposes and to enforce the performance of public duties

The grant of a writ of Mandamus is in the absolute discretion of the Court concerned It is not a writ of right and is not granted as a matter of course A Court may grant a writ of Mandamus even if the right seems to be doubtful It may refuse to issue a writ of Mandamus on the ground of special circumstances of the case But the Courts are required to take a liberal view and grant a writ of Mandamus whenever the circumstances of a case warrant the issuing of such a writ

Article 32 provides an additional right because Section 45 of the Specific Relief Act also provides for the issue of orders in the nature of a writ of Mandamus Section 45 of the Specific Relief Act runs thus —"Any of the High Courts of Judicature at Calcutta, Madras and Bombay may make an order requiring any Specific Act to be done or forborne within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior court judicature: Provided (*a*) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing of the said specific act; (*b*) that such doing or forbearing is, under any law for the time being in force, clearly incumbent

on such person or Court in his or its public character, or on such corporate character (*c*) that in the opinion of the High Court such doing or forbearing is consonant to right and justice ; (*d*) that the applicant has no other specific and adequate legal remedy , and (*e*) that the remedy given by the order applied for will be complete . . " Section 46 of the same Act provides that every application under Section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof The High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

(*iii*) **Prohibition**

A writ of Prohibition is issued by a superior Court directing an inferior Court not to exercise jurisdiction with which it is not legally vested Such a writ compels the Courts entrusted with judicial duties to keep within the limits of their jurisdiction It orders the immediate stoppage of the trial of the case in the Lower Court A writ is issued against a Judge of an inferior court if that Judge is interested in the cause, is otherwise biased, or has altered or cancelled his previous judgment etc

A writ of prohibition is issued on a notice of motion or an application supported by an affidavit If any Judge or any party proceeds with the case in spite of the writ of prohibition, contempt of Court proceedings can be started against the person concerned

It is to be noted that while granting a writ of prohibition, the Court should not take into consideration the fact that an alternative remedy exists to correct the absence of jurisdiction or the excess of jurisdiction. The court will also not consider the fact that an appeal lies against the exercise of such jurisdiction by the lower Court or any authority exercising quasi-judicial functions.

(*iv*) **Certiorari** **("To be more fully informed of").**
A writ of certiorari is issued by a superior Court to an

inferior Court requiring the latter to send the record of a particular case pending before it to the superior Court The object of such a writ is to see that the applicant gets sure and speedy justice The reason is that an inferior Court may not be competent enough to do complete and effective justice.

Regarding the nature and scope of the writ of certiorari, Viscount Simon, L. C has made the following observations ,— "The ancient writ of certiorari in England is an 'original writ' which may issue out of a superior Court requiring that the record of the proceeding in some cause or matter pending before an inferior Court should be transmitted to the superior Court to be there dealt with The writ is so named because, in its original Latin form it required that the King should "be certified" of the proceedings to be investigated, and the object is to secure, by the exercise of the authority of a superior Court, that the jurisdiction of the inferior Tribunal should be properly exercised This writ does not issue to correct purely executive acts, but, on the other hand, its application is not narrowly limited to inferior 'Courts' in the strictest sense Broadly speaking, it may be said that if the act done by the inferior body is a judicial act, as distinguished from being a ministerial act, certiorari will lie The remedy, in point of principle, is derived from the superintending authority which the Sovereign's Superior Courts, and in particular the Court of King's Bench, possess and exercise over inferior jurisdiction" (70 I A 129).

It is to be noted that a writ of prohibition differs from a writ of Certiorari A writ of prohibition can be brought at an earlier stage of the proceedings complained of It is a preventive rather than a remedial measure.

(v) Writ of Quo Warranto ("By what warrant")

A writ of Quo Warranto may be issued by a Court when a person acts in a capacity in which he is not entitled to act It is a writ of right issued by a Court against a person who claims or usurps any office, franchise or liberty Such a writ requires the person against whom it is issued to show as to by

what authority he supports his claim so that the same may be determined The writ of Quo Warranto is in the nature of an injunction Students of constitutional history of England know that Edward I started Quo Warranto proceedings against those barons who were holding baronial courts without the authority of the King.

Q 8 What are the "seven freedoms" guaranteed by the constitution and what are their limitations ?

Ans Article 19 of the constitution says that all the citizens of India shall have the right to freedom of speech and expression, the right to assemble peaceably and without arms, the right to form associations or unions, the right to move freely throughout India, the right to reside and settle in any part of India, the right to acquire, hold and dispose of property, and the right to practise any profession, and to carry on any occupation, trade or business

But it is to be noted that the right to the above-mentioned seven freedoms is not absolute Article 358 provides that while a proclamation of emergency is in operation, the State has the right to pass any law or to take any executive action which may be in violation of any of the above-mentioned seven freedoms In addition to this, many other limitations have been put on the seven freedoms

As regards the right of freedom of speech and expression, a state can put restrictions on the ground of defamation, contempt of Court, decency or morality and the security of the state. This right does not enable a citizen to do illegal or immoral things He has also not the license to overthrow the state by force or unlawful means

As regards the freedom of assembling, it is clearly provided that the assembly must be peaceful. The members of the assembly should not carry arms, although the Sikhs are allowed to carry Kirpans. The object of this restriction is

to prevent the breach of peace or the creation of public disorder

As regards the right to form associations and unions, the state is allowed to put reasonable restrictions in the interests of the public in general The state is authorised to stop illegal strikes by organised workers. It can stop the association of those individuals who may be entering into a criminal conspiracy It can stop the formation of any association or union whose existence is dangerous to public peace. The state can put reasonable restrictions in the interests of public morality

As regards the right to move freely throughout India, the state can put reasonable restrictions in the interests of the general public or for the protection of the interests of any Scheduled Tribes

As regards the right to reside and settle in any part of India, any state can put reasonable restrictions either in the interests of the general public or for the protection of the interests of the Scheduled Tribes

As regards the freedom to acquire, hold and dispose of property, any state can put reasonable restrictions in the interests of the general public or for the protection of the interests of any Scheduled Tribes

As regards the freedom of profession, occupation, trade or business, any state can put reasonable restrictions in the interests of the general public, or in the interest of public order, morality or health A state can prescribe any qualification for carrying on any profession or technical occupation

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☞ Q 8 What provisions have been laid down by the Indian Constitution for religious freedom in order to maintain the secular character of the Indian State ?

Ans Article 25 lays down that all persons are equally entitled to freedom of conscience and the right freely to profess,

practise and propagate religion. But this right is subject to public order, morality and public health The state can make any law which regulates or restricts any economic, financial, political or other secular activities which may be associated with any religious practice That law may provide for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Subject to public order, morality and health, every religious denomination shall have the right to establish and maintain institutions for religious and charitable purposes, the right to manage its own affairs in matters of religion, the right to own and acquire movable and immovable property, and the right to administer such properties in accordance with law

No person shall be compelled to pay any tax for the promotion or maintenance of any particular religion or any religious denomination

No religious instruction shall be provided in any educational institution wholly maintained out of State funds But if any educational institution is administered by the State, but has been established under any endowment or trust which requires that religious instruction shall be given, the State shall give religious education in the case If any educational institution is recognised by the state or is getting monetary help from the State, no student studying in that institution shall be forced to attend any religious worship conducted in that institution or lecture given in that institution.

Article 16 provides that no citizen shall be discriminated against in respect of any employment of office under the State on grounds of relegion only.

Religious minorities are given the right to establish and administer educational institutions of their choice The State will not show any discrimination while making grants-in-aid to these institutions No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of State Funds only on grounds of religion.

It is clear that the State is to observe an attitude of impartiality towards all religions. The State should not stand between man and his Creator. This is the only attitude which is consistent with the secular character of the Indian State.

☞Q 9 Discuss the provisions of the Indian Constitution with regard to the right to life and personal liberty ?

Ans Article 21 of the Constitution provides that no person shall be deprived of his life or personal property except according to procedure established by law There was a lot of discussion over the expression "procedure established by law" It has been held in the case of Gopalan Vs the State that "Procedure established by law" is not the same thing as "the due process of law" as used in the American Constitution

The right implies that no person is to be deprived of his life or personal liberty enless and until it is proved that the action taken by the executive is in accordance with the provisions of law Suppose a person is arrested without any rhyme or reason Article 32 provides the remedy. The Supreme Court can issue a writ of Habeas Corpus directing the person in whose custody the arrested person is, to produce the body of the arrested person before the court If the Supreme Court is not satisfied regarding the legality of the arrest or imprisonment, it can order the arrested person to be released forthwith Similar powers are given to the High Courts

Exceptions

But the Constitution puts certain limitations on the personal liberty of the individuals Those restrictions come into operation when a person is arrested under the ordinary law or under a law of preventive detention

1 When a person is arrested under the ordinary law, he must, after arrest, be informed of the grounds of his arrest He must be given the right to consult and to be defended by

☞ Q 10 Writs notes on the following cases —

Gopalan Vs The State, Brij Bhushan Vs The State of Delhi, Romesh Thappar v The State of Madras, Dr N B Khare Vs The State of Delhi, Bulsara Vs State of Bombay, Rashid Ahmed Vs The Municipal Board, Karaina, Champakam Dorairajan Vs The State of Madras, Master Tara Singh v Punjab State

Ans 1 Gopalan Vs The State

In this case, Gopalan petitioned the Supreme Court for a writ of Habeas Corpus on the ground that the Preventive Detention Act, 1950 was void and inoperative and that therefore his detention under that Act was illegal The Supreme Court held, by a majority, that the Preventive Detention Act was a valid piece of legislation and Gopalan's application for a writ of Habeas Corpus could not be entertained However, it was unanimously held that S. 14 of the Act which took away or abridged the right of the detenue to move the Court by appropriate proceedings was illegal and void Das J remarked "It appears to me, therefore, that section 14 of the Act in so far as it prevents the detenue from disclosing to the Court the grounds communicated to him is not in conformity with Part III of the Constitution and is, therefore, void under Article 13 (2)". The same Judge remarked that "the only power of the Court is to determine whether the impugned law provided some procedure and observed and obeyed the minimum requirements of Article 22 and if it has, then it is not for the Court to insist on more elaborate procedure according to its notion or to question the wisdom of legislative authority in enacting the particular law, however harsh, unreasonable, archaic, odious the provisions of that law may be" It was also held that Article 19 which deals with freedoms of citizens and Article 21 which deals with protection of life and personal property, are mutually exclusive and each one of them deals with different aspects of liberty Both preventive and punitive detention are held to be outside the scope of Article 19. The words "procedure established by law" do not mean

"due process of law" as understood in the U S A Article 21 does not afford any protection against competent legislative action in the field of substantive criminal law As regards the right to life and personal liberty there is the legislative supremacy and not judicial supremacy

2 Brij Bhushan *v.* The State of Delhi

In this case, the Chief Commissioner issued an order requiring the printer and publisher of the Organiser, a weekly of Delhi, under Section 7 of the East Punjab Public Safety Act, 1949, "to submit for scrutiny in duplicate before publication all communal matter and news about Pakistan .." The petitioners applied for a writ of certiorari and prohibition against the Chief Commissioner The result was that the order of the Chief Commissioner was quashed

3 Romesh Thappar *v.* The State of Madras

In this case, the State of Madras imposed under the Madras Maintenance of Public Order Act a ban on the entry and the circulation of the journal "Cross Roads" in the state of Madras The petitioner contended that the said orders contravened the fundamental right to freedom of speech and expression as given by Article 19 of the Constitution The Supreme Court accepted the application and observed that the freedom of speech and expression included the propagation of ideas and that was possible by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value The order of the Madras Government was a violation of the petitioner's fundamental right as given under Article 19

4 Dr. N B Khare *v.* The State of Delhi

In this case, an order was passed by the District Magistrate, Delhi under Section 4 of the East Punjab Public Safety Act requiring Dr Khare to remain away from Delhi for a period of three months. Dr. Khare applied to the Supreme Court under Article 32 and contended that the order of the District Magistrate infringed his fundamental right to freedom

of movement throughout India It was held that an externment order necessarily abridged the right given by Article 19 and the question was whether the order was within the limitations permitted under the same Article. The contention of the petitioner was not accepted by the majority of the Judges of the Supreme Court and consequently his application was dismissed. Kania, C J observed thus · "The order is made because the activities of the petitioner are likely to prove prejudicial to the maintenance of law and order and the grounds specified have a direct bearing on that conclusion of the District Magistrate I, therefore, think that this contention of the petitioner must be rejected" In a dissenting note, Mahajan and Mukherjee JJ held that a person could be externed for three months but the government could extend the time without any limit This was an unreasonable restriction and therefore Section 4 was void as being contrary to Article 19.

5 Bulsara V State of Bombay.

In this case, a petition was made to the High Court of Bombay challenging the validity of the Bombay Prohibition Act, 1949, on the ground that it was void for contravening certain fundamental rights guaranteed by the Indian Constitution A Full Bench of High Court of Bombay held that the Prohibition Act as a whole could not be declared to be void and inoperative. However, there were certain provisions which were discriminatory and provided for preventive detention. These provisions were void because they were inconsistent with the fundamental rights

6 Rashid Ahmed v The Municipal Board, Kairana.

In this case, Rashid Ahmed made an application to the Supreme Court for the enforcement of his right to carry on his business which was completely stopped by the Municipal Board of Karaina. Rashid Ahmed, a commission agent, was carrying on wholesale business in vegetables and fruits at Karaina in U P Certain bye-laws were made by the Municipal Board Under one of the bye-laws, the application of Rashid Ahmed for a license to carry on his business at his

shop was rejected on the ground that there was no bye-law authorising the issue of any license to him. The Supreme Court accepted the petition of Rashid Ahmed and held that his fundamental right to carry on business had been violated The restriction was not reasonable.

7. Champakam Dorairajan v The State of Madras.

In this case, the Madras government issued an order limiting the number of seats allotted to the members of a particular community, the Brahmins, in certain colleges attached to the Madras University, irrespective of their merit. An application was made to the High Court by the petitioner that the refusal of admission to him was a violation of his fundamental right. It was held that the order of the Government was against Article 15 of the Constitution, and hence was void It was held that the state could not discriminate against the applicant for reasons of his caste or religion A similar decision was given in the case of C. R. Srinivasan v the State of Madras.

8 Master Tara Singh v Punjab State

In this case, prosecutions were started against a political worker on account of his two speeches under Sections 124-A and 151-A, I. P. C and Section 24(a) of the East Punjab Public Safety Act The accused applied to the High Court of the Punjab contending that the above sections became invalid on 26-1-50 in view of Article 13, as being infringements of the freedoms guaranteed by Article 19. The restrictions were not reasonable and hence were not covered by Article 19 The case was withdrawn to the High Court which held that Section 24(a) Public Safety Act was void in view of Supreme Court judgment in Brij Bhushan v. The State of Delhi The result was that the accused was ordered to be set at liberty.

CHAPTER IV

Directive Principles

☞ Q. 11. Discuss the nature and extent of the Directive Principles of State Policy.

Ans Part IV of the Indian constitution deals with the directive principles of state policy According to Article 38, the state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of national life

1 According to article 39, the state has to direct its policy in such a way that all men and women equally have the right to adequate means of livelihood The ownership and control of the material resources of the country are to be distributed in such a way that the common good is achieved The economic system of the country should not result in the concentration of wealth and means of production in the hands of a few There is to be equal pay for equal work for men and women The health and strength of the workers are not to be abused The citizens are not to be forced to enter occupations unsuited to their age and strength. The children and youngmen are to be protected against exploitation and against moral and material abandonment

2 It is the duty of the state to take steps to organise village Panchayats and give them such powers and functions as can make them units of self-government

3. It is the duty of the state to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

4. The state shall make provision for securing just and humane conditions of work and for maternity relief The state shall endeavour to secure to all workers a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities The state shall endeavour to promote cottage industries

5 The state shall endeavour to secure for the citizens a uniform civil code for the whole of the country. The state shall endeavour to provide for free and compulsory educa-

tion for all children up to the age of 14 within ten years of the constitution.

6 The state shall promote the educational and economic interests of the weaker section of the people, particularly the scheduled castes and scheduled tribes, and also protect them from social injustice and all forms of exploitation.

7 It shall be the primary duty of the state to raise the level of nutrition and the standard of living of the people of India and also to improve their health. The state is to adopt measures to stop the consumption of intoxicating drinks and drugs The state is to endeavour to organise agriculture and animal husbandry on modern and scientific lines It is the duty of the state to protect monuments and places and objects of national importance The state is to take steps to separate the judiciary from the executive.

8 Article 51 provides that the state shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations, and encourage settlement of international disputes by arbitration

The nature of Directive Principles of State Policy

Article 37 of the constitution provides that the directive principles of the state policy are not enforceable by any Court In spite of this, these principles are *fundamental* in the governance of the country. Moreover, it shall be the duty of the state to apply these principles while making laws.

The directive principles of state policy are a novel feature and they seem to have been borrowed from the Irish constitution Even under the Indian constitution of 1935, we had what were known as the Instruments of Instructions issued by the British Government to the Governor-General and the Governors of the Provinces It is a matter of history that in the draft Constitution it was contemplated to issue similar instructions to the President and the Governors. Later on however, this proposal was dropped and we have the directive principles of state policy in the present form.

These principles are those which the fathers of the Indian Constitution thought to be the basic principles They are in the nature of directions, instructions or recommendations to the executive authorities and the legislature They are like moral precepts and economic maxims These can be used by the opponents of the government to criticise the work of the government It is possible that whatever part has been played by "the police power of the state and the principle of "due process of law" in the American constitution, may be done by the directive principles of state policy under the Indian constitution It is not possible to say as to how far these principles have to be kept in mind by the Supreme Court while interpreting the Constitution These principles of state policy appear like a political manifesto, an instrument of instructions, a code of moral precepts which has to guide both the executive and the legislature They merely tell us as to what the hopes and aspirations of the fathers of the constitution were They are intended to create a healthy atmosphere for the growth of a democratic republic in India.

Q 12 Point out the difference between the fundamental rights and the directive principles of state policy ?

Ans It is true that Article 37 lays down that the directive principles of state policy are fundamental in the governance of the country It is also true that the same Article makes it the duty of the State to apply these principles while making laws But in spite of this, there is a fundamental difference between the fundamental rights and directive principles of state policy It is true that both the subjects deal with important matters, but while the fundamental rights can be enforced by the Supreme Court, High Courts or any other Court which may be given such a power by Parliament, that is not the case with the directive principles of state policy. These principles are a goood guide, but they cannot be enforced Human experience shows that whenever no machinery is provided for

the enforcement of certain rights, they become merely paper declarations and are not of any great practical value.

CHAPTER V
The Union Executive

Q. 13. Explain the tenure of office and method of election of the President of India ?

Ans. 1 The President is to be elected and hold office for five years from the date on which he enters upon his office. He may resign his office. He may be removed from office by impeachment on the charge of the violation of the constitution He can be re-elected for a second term, but probably not for a third term. No person is to be elected President who has not completed the age of 35, and who is not qualified for election as a member of the House of the People. A person holding an office of profit under the Government is not to be elected President. As President, he is not to hold any other office of profit He is entitled without payment of rent to the use of his official residence. He is entitled to such emoluments, allowances and privileges as may be determined by Parliament by law His emoluments and allowances are not to be decreased during his term of office

2. As regards the procedure for the election of the President, he is to be elected by the members of an electoral college consisting of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of the States. As far as possible, there is to be uniformity in the scale of representation of the different states at the election of the President. Election is to be held in accordance with the system of proportional representation by means of the single transferable vote The voting is to be by secret ballot. It is clear that the people have no direct part in the election of the President Dr. Rajendra Prasad has been elected the first President under the new constitution.

Q. 44 What is the method of impeachment of the President ?

Ans When the President of India has to be impeached for the violation of the constitution, the charge is to be perferred by either House of Parliament. No charge is to be perferred unless the proposal to perfer such a charge is contained in a resolution which has been moved after at least 14 days' notice in writing, signed by not less than one-fourth of the total number of the members of the House has heen given Such a resolution must be passed by a majority of not less than two-thirds of the total membership of the House

When a charge is preferred by either House of Parliament, the other house is to investigate the charge or cause the charge to be investigated The President has the right to appear at the time of investigation He may appear through a representative even If as a result of the investigation, a resolution is passed by not less than two two-thirds of the total membership of the House investigating the charge, declaring that the charge preferred against the President has been proved, such resolution has the effect of removing the President from his office as from the date on which the resolution is passed The President continues to function as President during the period of investigation

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Q. 15. What is the position of the Vice-President of India ?

Ans The Vice-President of India is the ex-officio chairman of the Council of States, and as such presides over its meetings. He is elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of single transferable vote Voting is to be by secret ballot. He is not to hold any other office of profit When he acts as the President of India, he is not to perform his duties as the Chairman of the Council of States. If any vacancy arises in the office of the President by reason of his death, resignation or removal, the Vice-President acts as President

till the date a new duly-elected President enters upon his office

Dr S. Radhakrishnan has been elected as the first Vice-President under the the new Constitution.

☞Q. 16 What are the judicial powers of the President and a Governor under the Indian Constitution ?

Ans The judicial powers of the President and a Governor are the same The powers of the President correspond to the prerogatives of the British Crown

1 The President has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence (*a*) in all cases where the punishment or sentence is by a Court Martial, (*b*) in all cases where the punishment or sentence is for an offence against any law relating to a matter concerning the Union Government, and (*c*) in all cases where the sentence is a sentence of death.

2. The power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial is not affected by this power of the President.

3. The power to suspend, remit or commute a sentence of death exercisable by the Governor or Rajpramukh of a state is also not affected

☞ Q. 17 What are the executive powers of the President of India ?

Ans 1. Article 53 of the constitution provides that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the constitution. It is clearly stated that this omnibus provision does not transfer to the President any functions which are conferred by any existing law on the government of any state or other authority

This also does not prevent the Parliament from conferring by law functions on authorities other than the President

2. It is to be noted that the Indian President does not occupy the same position as the American President does His position is more akin to the King of England He is not the real head of the government The real power to run the administration lies in the hands of the Prime Minister and his colleagues However, he is the formal head of the administration All executive actions of the Union government are to be taken in the name of the President. All contracts made on behalf of the Government of India have to be expressed as made by the President. They have to be executed in such a manner as the President may direct or authorise

3 The President has the power to appoint a very large number of officers He chooses the Prime Minister and appoints other ministers on the advice of the Prime Minister He has also the power to appoint such officers as the Attorney-General of India, Judges of the Supreme Court, Comptroller and Auditor-General of India, Governors and Rajpramukhs of states, High Court Judges, the Finance Commission, Chairman and members of the Union Public Service Commission, Commission to investigate interference with water supplies, a special officer for the Scheduled Castes and Tribes a commission to report on the administration of Scheduled Areas and a Commission to investigate into the condition of the backward classes He has also the power to remove the ministers individually. He can also remove the attorney-General for India and the Governor of any state

4. Article 78 of the Constitution provides that it is the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation It is also his duty to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for. If the President so requires, the Prime Minister has to submit for the consideration

of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

5 As regards the military powers of the President, he is the Supreme Commander of the Defence Forces But Article 53 of the constitution specifically provides that the exercise of military power by the President shall be regulated by law. Parliament has the right to make laws for the raising, training, maintenance, control and employment of the Defence Forces Parliament has the right to lay down by law the method of declaring war and making peace The Indian President cannot declare war or employ forces without or in anticipation of the sanction of the Parliament The Indian President does not possess the power which the American President does in this field

6 As regards his diplomatic powers, they are very wide. They comprise "all matters which bring the Union into relation with a foreign country" But the final power in these matters also rests with Parliament. The President and the Ministers may negotiate treaties and agreements with other countries, but Parliament may ratify them or may not ratify them

7 President is to represent India in international affairs He will appoint Indian representatives to foreign countries and also receive diplomatic representatives only from those countries which have been recognised by Parliament.

It is clear that the administrative powers of the President cover a wide field

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☞ Q. 18 What are the legislative powers of the President?

Ans. 1 The legislative powers of the President cover a very wide field As the King of England is a component part of the British Parliament, so is the relation of the President of India with the Union Parliament. The President has the

power to summon, prorogue or dissolve the House of the People on the advice of the Prime Minister This he can do at any time The limitation is that the Parliament must be summoned and not more than six months should pass between the ending of the first session and the beginning of the second session In order to resolve a deadlock, President can summon a joint sitting of the House of People and the Council of States. At the commencement of every session, Presideat has to address both Houses of Parliament assembled together This power is similar to the speech from the throne in England In his opening address, the policy of the ministry is officially explained regarding the outstanding problems

2. Article 86 provides that the President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members He may also send messages to either House of Parliament whether with respect to a Bill then pending in Parliament, or otherwise, and a House to which any message is sent shall with all convenient despatch consider any matter required by the message to be taken into consideration

3 Every bill passed by both the Houses of Parliament must be presented to the President for his assent The Bill does not become an Act unless the President gives his assent to it

4 When a Bill is presented to the President for his assent, he may give his assent to the Bill, or he may withhold his assent from the Bill, or in the case of Bills other than Money-Bills, he may return the bill to the Houses for reconsideration on the lines suggested by him If a bill is returned to Parliament for reconsideration, it is the duty of the House to reconsider the same If the Bill is passed again by the House with or without amendment and presented to the President for his assent, the President shall be bound to give his assent.

5 Article 3 of the Constitution provides that no Bill for the formation of a new state or states or the alteration of the boundaries of the existing states etc , shall be introduced in either House of Parliament without the recommendation of President.

6 The President has the power to legislate by making ordinances during the recess of Parliament. The only justification for this is that the President may have to meet with an emergency during the recess of Parliament. But the ordinance-making power is to be exercised by the President on the advice of his Council of Ministers Moreover, the ordinance must be placed before Parliament when it reassembles and it shall automatically cease to have effect after the expiry of six weeks from the date of its re-assembly, unless it is disapproved earlier by Parliament

7. It is the duty of the President to cause to be laid before Parliament the Annual Financial Statement and Supplementary Budget, if any, the Report of the Auditor-General of India relating to the accounts of the Government of India, the recommendations made by the Finance Commission together with the action taken on them, and the annual Report of the Union Public Service Commission, explaining the reasons where any advice of the Commission has not been accepted

8 No demand for grant of money can be made except on the recommendation of the President No Money bill is to be introduced or moved except on the recommendation of the President. But no recommendation is required for the moving of an amendment which reduces or abolishes any tax. A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by eithor House of Parliament unless the President has recommended the consideration of the Bill.

☞ Q. 19 What are the emergency powers of the President?

Ans Part XVIII of the Indian Constitution deals with the emergency powers of the President Three kinds of emergencies are mentioned viz. emergency arising out of war or external aggression or internal disturbance, emergency arising out of the break-down of the constitutional machinery in a state or states, and financial emergency

1. Emergency arising out of war or internal disturbance

(*i*) Article 352 of the Constitution provides that if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to the effect Such a Proclamation may be revoked by a subsequent Proclamation. The Proclamation shall be laid before each House of Parliament. It shall cease to operate at the expiry of two months unless before the expiry of such period it has been approved by resolution of both Houses of Parliament. If a Proclamation is issued when the House of the People has been dissolved or the House of the People is dissolved during the period of two months in which the Proclamation of emergency is in operation, the Proclamation ceases to operate at the expiry of thirty days from the date on which the House of People first sits after the new elections The things are otherwise if the new House of the People approves of the Proclamation before the expiry of the thirty days

(*ii*) A Proclamation of emergency may be made before the actual occurrence of war or of any such aggression or internal disturbance if the President is satisfied that there is an imminent danger for the same.

(*iii*) During the period Proclamation of emergency is in force, the executive power of the Union shall extend to the giving of the directions to any state as to the manner in which its executive power is to be exercised The power of Parliament to make laws with respect to any matter shall include the power to make laws conferring powers and imposing duties upon the Union Government and its officers with respect to matters given in the State List.

(*iv*) The President may direct that all or any of the provisions of the constitution relating to the distribution of revenues between the Union and the states shall have effect subject to such exceptions or modifications as he thinks fit

(*v*) The comprehensive powers which are given to the Union Government in times of emergency can be appreciated and justified if we keep in mind the provisions of Article 355

which provides that it shall be the duty of the Union to protect every state against external aggression and internal disturbance

(*vi*) The effect of Proclamation of emegency is that the right of freedom which is guaranteed by Article 19 of the constitution is suspended Even if any fundamental right is infringed by the executive or the legislature during this period, the Supreme Court or the High Courts cannot interfere

(2) Emergency arising out of breakdown of Constitutional Machinery

(*a*) Article 355 lays down that it is the duty of the Union Government to ensure that the Government of every state is carried on in accordance with the provisions of the constitution Article 356 says that if the President, on receipt of a report from the Governor or Rajpramukh of a state or otherwise, is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution, he may by Proclamation assume to himself all or any of the functions of the government of the state and all the powers exercisable by the Governor or Rajpramukh He may also declare that the powers of the legislature of the state shall be exercisable by or under the authority of Parliament He may make such incidental and consequential provisions as appear to him to be necessary or desirable for giving effect to the objects of Proclamation He may suspend the operation of any provision of the constitution relating to the state But the President will not assume to himself any power exercisable by the High Court.

(*b*) A Proclamation issued under Article 356 may be revoked or varied by subsequent Proclamation Every such Proclamation shall be laid before each House of Parliament and shall cease to operate at the expiry of two months unless the same is approved by resolutions of both Houses of Parliament before the expiry of that period If the Proclamation is made at a time when the House of the People had been dissolved

or the House of the People is dissolved during the period of two months when the Proclamation is in force, the Proclamation ceases to operate after the expiry of 30 days from the date of the first meeting of the new House of the People. However, the new House may approve of the Proclamation before the expiry of 30 days If a Proclamation is approved by both Houses of Parliament, it ceases to operate after six months from the date of approval But no Proclamation is to remain in force for more than three years

(c) During the period of Proclamation, it is competent for Parliament to confer on the President the power to make laws and to authorise the President to delegate that power to any other authority It is also competent for Parliament or President to make laws conferring powers and imposing duties upon the Union or its officers and authorities It is also competent for the President to authorise the expenditure from the Consolidated Fund of the state pending the sanction of such expenditure

3 Financial Emergency.

(i) Article 360 provides that if the President is satisfied that a situation has arisen which threatens the financial stability or credit of India, he may, by Proclamation, declare the same. Such a Proclamation may be revoked by a subsequent Proclamation. It has to be laid before each House of the Parliament The Proclamation ceases to operate at the expiry of two months unless it is approved earlier by a resolution of both Houses of Parliament.

(ii) When such a Proclamation is in force, the executive authority of the Union extends to the giving of directions to any state to observe such canons of financial propriety as may be given in the direction It is competent for the President to issue directions for the reduction of salaries and allowances of all servants of the Union Government including the Judges of the Supreme Court and the High Courts. Any state may be required to reduce salaries and allowances of any class of persons employed by the state and reserve all money Bills or

other Financial Bills for the consideration of the President after they are passed by the state legislature.

A Distinction.

It is to be noted that the right to move the courts for the enforcement of fundamental rights is not affected in the case of a Proclamation of failure of constitutional machinery. But that right is suspended in case of a Proclamation of emergency Moreover, when a Proclamation of emergency is declared, state authorities do not stop functioning The only result is that greater control comes into the hands of the Union Government In the case of the failure of constitutional machinery, the government of the state concerned is superseded by the Union Government and the latter alone has the right to make laws or run the administration of the state

Regarding the emergency powers of the President, Principal Sri Ram Sharma says : "The President s power of proclaiming an emergency seems to lay too great a burden on an individual But even though the Constitution does not say so explicitly, it is likely that no President would take on his own shoulders the enormous burden of deciding when the peace or tranquillity of the country is in danger by internal disturbance or external threat, if the solvency or the financial credit of the country is at stake, or if a vital threat to the means of communications of food supplies exists. These are all matters which the head of the Government rather than the head of state can decide The decision however needs run in the name of the President for on such occasions it is necessary that national unity rather than the division of public opinion be emphasised. The question of taking over the government of a state in case of the breakdown of the machinery of constitutional government raises another issue The Union Ministry forms the usual constitutional advisers of the President. But the government in a state is carried on by the Governor and a Provincial Ministry. A breakdown will not imply that the Governor is not playing his allotted role in the administration or is abusing his powers. The remedy against this lies in re-calling the Governor or ordering his impeach-

ment. A breakdown of the constitutional machinery would imply that a ministry capable of inspiring confidence and having a more or less stable majority at its back in the legislature cannot be formed. It may also imply that the dissolution of the existing legislature and the election of a new House or Houses does not hold out a promise of better things. Of course, the administration may break down on account of rampant corruption or nepotism Such an emergency would in all cases be a judgment on the ministry of the state concerned The President cannot therefore be expected to call for its advice on the question He can act only on the advice of his Union Council of Ministers."

Critics point out that there is the real danger of the emergency powers of the President being used by unscrupulous persons for establishing their dictatorship The President may not summon the legislature during the period of emergency. He may dismiss the ministers and appoint a Prime Minister who is dependent upon him and has no majority in the House of the People It is true that the President can be impeached for the violation of the constitution, but it is pointed out that the exercise of emergency powers is not a violation of the Constitution Moreover, no impeachment can take place during the period of emergency An unscrupulous person who aims at capturing power, is most likely to destroy the constitutional machinery before the emergency is over and thus avoid any chance of being impeached It is pointed out that the Weimer Constitution of Germany should serve as warning to the Indians Hindenberg was elected to defend the constitution and not to overthrow it The same was the case with Napoleon III who overthrew the constitutional machinery in 1852 But the saving feature of the Indian Constitution is that our politicians seem to be very much impressed by the Parliamentary system of England As such, with the passage of time, there is every possibility of the President of India to play the same rule as is done by the King in England He may act as "a symbol of national unity, a formal instrument of ratification, an instrument for occasionally warning ministers against the abuse of the party spirit". This is what Dr Rajendra Prasad himself says:

"Although there is no specific provision in the Constitution itself, making it binding on the President to accept the advice of his ministers, it is hoped that the convention under which in England the King always acted on the advice of his ministers, would be established in this country also and the President would become Constitutional President in all matters."

☞ Q. 20 Discuss the position of Ministers at the Centre under the new Constitution.

Ans. (1) Article 53 provides that the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the constitution

(2) According to Article 77, there is to be a Council of Ministers with the Prime Minister at the head to *aid and advise* the President in the exercise of his functions The question whether any, and if so what, advice was tendered by ministers to the President shall not be inquired into in any Court.

(3) Article 77 says that the Prime Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Prime Minister. The Ministers shall hold office during the pleasure of the President The Council of ministers shall be collectively responsible to the House of the People. It is to be noted that while under the Parliamentary system in England, Ministers are responsible to the House of Commons both individually and collectively, in India the responsibility is only collective, and not individual also The result is that if any minister does not approve of the policy of the Ministry, the only proper course for him is to resign himself.

(4) Before a Minister enters upon his office, the President is to administer to him the oaths of office and and secrecy The Minister who for any period of six consecutive months is not a member of either House of Parliament shall, at the expiry that period, cease to be a Minister.

(4) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and until

Parliament so determines, shall be such as are specified in the Second Schedule of the Constitution. It is to be noted that this provision differs from the one given in the Government of India Act, 1935. In that Act, the salary of the Minister could not be changed during the tenure of his office The result of the new provision under the new Constitution is that instead of forcing the entire Ministry to resign, Parliament can express its lack of confidence in a Ministry by reducing his salary to a nominal amount, say Re 1

(6) According to Article 78, it is the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation The Prime Minister is also to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for. If the President so requires, the Prime Minister has to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by rhe Council of Ministers

(7) According to Article 77, the President shall make rule for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business

(8) If the President happens not to agree with the Council of Ministers on any matter, all that he can do is to persuade the Ministers to his point of view If he fails to do that, he has to accept the advice of the Council of Ministers But ultimately, the relation between the President and the Ministers will depend upon the personal equation His position will be weaker or stronger according to his own personality and the strength of the Cabinet.

(9) It is true that the House of the People can turn out the Ministers by passing a vote of no-confidence against them But the Ministers may also ask the President to dissolve the House of the People on the ground that the House does not represent the public opinion. Moreover, it is the Ministers

who will initiate all legislation. They will determine the policy of the Government whether in internal matters or external matters Even when the President exercises his powers in time of emergency, he will be doing so only with the concurrence of the Cabinet

10. It is true that the President can choose anybody he pleases as the Prime Minister, but the selected person must have the majority in the House of the People. Thus, this power will not mean much if there is one strong party commanding a majority in the House of People, because in such a case the President has no choice but to call the leader of the majority party to form the Ministry However, the President will have a lot of discretion if there are many parties and no party has a majority in the House of the People as is the case in France. In such a case, the President has a lot of discretion to pick and choose.

11. In England, every act of the King becomes valid only when it is countersigned by some Minister, but there is no such provision in the Indian Constitution. Article 77 (2) provides that orders and other instruments made and executed in the name of the President shall be authenticated in such a manner as may be specified in the rules to be made by the President, and the validity of such an order or instrument shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

12. Moreover, there is no legal sanction to compel the President to act only upon the advice of his Ministers in every matter The only thing that can make him do so is his moral obligation that he must act "in accordance with the Constitution". Even the fear of impeachment may have some effect on the conduct of the President in his relations with the Ministers. But the procedure for impeachment is very difficult and may not be followed at all in actual practice. That is the experience of the U. S A.

13 It is to be noted that many of the provisions of the English Constitution which have been developed there by means

of convention are embodied in the Indian Constitution There is still a lot of scope for the development of conventions on many points. Dr Rajinder Prashad, the first President of the Indian Republic and who was also the President of the Indian Constituent Assembly, made the following observations regarding the position of the President vis-a-vis the Ministers -- "Although there is no specific provision in the Constitution itself making it binding on the President to accept the advice of his ministers, it is hoped that the convention under which in England the King always acted on the advice of his ministers, would be established in this country also and the President would become a constitutional President in all matters."

☞ **Q 21. Explain the principle of Ministerial responsibility as provided for under the Indian Constitution**

Ans The system of ministerial responsibility as provided under the Indian Constitution is similar to that which prevails in England There are three aspects of this responsibility viz , responsibility to the legislature, responsibility to President and legal responsibility

(i) Responsibility to Legislature.

As regard the responsibility to the legislature, Article 75 of the constitution provides that the Council of Ministers shall be collectively responsible to the House of People The result is that the House of People can dismiss the Ministry by passing a vote of no-confidence against them or rejecting a bill introduced by the Ministry or rejecting the budget etc. The same Article provides that the salaries or allowances of the Ministers shall be such as Parliament may from time to time by law determine. The result of this provision is that the House of People can force a minister to resign by reducing his salary to a nominal amount or rejecting it altogether. In this way, an individual minister can be disposed of

As is the practice in England, in India also when the ministry is out-voted in the House of the People, it may refuse to

resign. It may request the President to dissolve the House of the People to ascertain the will of the People. If at the new elections the old ministry secures a majority in the House of the People, it continues to remain in office. If it is does not win the requisite majority, it has to resign.

(ii) Responsibility to President.

As regards the responsibility of the Ministers to the President, the only provision is that the Prime Minister shall be appointed by the President and other ministers shall be appointed by the President on the advice of the Prime Minister. The ministers are to hold office during the pleasure of the President Thus the President can dismiss any Minister he pleases. But in actual practice, the President will exercise this power only on the advice of the Prime Minister. The reason is that if the President dismisses a Minister without or against the advice of the Prime Minister, it will lead to the resignation of the whole ministry In such an eventuality, the President has to find an alternative ministry to carry on the administration of the country That may not be possible always, particularly if the old ministry had a solid majority in the House of the People. Thus discretion will force the President to use his power of dismissal of ministers only on the advice of the Prime Minister.

(iii) Legal Responsibility.

As regards legal responsibility of the Ministers, the Constitution does not specifically provide that the President can act only through the Ministers. There is no provision that every act of the President, to be effective, must be countersigned by some minister. As a matter of fact, Article 77(2) provides that if any order or instrument is made or executed in the name of the President, its validity shall not be questioned Moreover the Courts are not entitled to question as to what advice was tendered by the Ministers to the President. According to Article 361, the Government of India is liable for acts done by the President in exercise of his duties Thus, the principle of legal responsibility seems to be narrower in India than in England

☞Q 22 What are the principal features of the Cabinet Systm as provided at the Union Centre ?

Ans The following are the principal features of the Cabinet System at the Union Centre :—

1 There is a close relationship between the Cabinet and the parliament All the Ministers must belong to one House or the other. If they are not at the time of their appointment, they must get it done within six months of their appointment As the ministers belong to the majority party in the House of People, they can be expected to work in harmony and Co-operation with the Parliament On account of their majority in the legislature, they can be expected to get their work done from Parliament The ministers introduce Bills and answer questions and defend their policies in the legislature

2 The Cabinet is a homogeneous body The memerbs of the Cabinet ordinarily belong to the same party and hold similar views on the important problems of the day

3 Another characteristic is the leadership of the Prime Minister The Constitution provides that "there shall be a Council of Ministers with the Prime Minister as its head". The ministers are to be appointed on the advice of the Prime Minister The latter presides over the meetings of the Council of Ministers He can ask any minister to resign He is the link between the President on the side and the Cabinet on the other The nation has faith in him and his policies, and consequently he commands great influence

4 The ministers are responsible to the legislature Their responsibility is collective If one minister is defeated in the House of the People, all ministers must resign

5 The President is excluded from the Cabinet He cannot attend its meetings Although every action is taken by the Cabinet in the name of the President yet the latter cannot be held responsible for anything done by the ministers

☞Q 23 What is the position ef the Prime Minister of India under the new Constitution ?

Ans The position of the Prime Minister of India is similar to the Prime Minister of England He is to be the leader of the majority party in the House of the People He is to be appointed by the President, but the other ministers are to be appointed by the President on the advice of the Prime Minister The question as to how much of discretion will be exercised by the President in the matter of the selection of the Prime Minister, will depend upon the position of the parties in the country If India follows the way of France and there come into existence too many parties, not any of them possessing an absolute majority in the House of the People, the discretion of the President will be substantial Like the French President, he can pick and choose and favour the leader of any party he pleases But, if most of the parties are liquidated and India comes to have two strong parties, the President will have practically no choice in the matter of the selection of the Prime Minister He must call the leader of the majority party to form the ministry It cannot be denied that the function of the President is 'only to secure a Government, not to try to form a Government of which he approves To do so would be to engage in party politics."

Although the President may not interfere in the matter of the selection of the colleagues by the Prime Minister, the work of the Prime Minister is not an easy one Although he may not like some of big guns of his party, he must include them in his Cabinet To exclude them, he would not only shatter the solidarity of his party, but also weaken his ministry Ultimately, the strength of a ministry depends upon the persons who constitute it. It will be suicidal for a Prime Minister to include only his "yes-men" in the ministry Such is not the type of the people who can make the ministry strong. The Prime Minister must include all those persons who represent the various shades of opinion in his party In certain cases, the Prime Minister may find a rivalry among his followers to occupy a particular portfolio. He must reconcile those rivalries if he aims at team work among the members of the ministry.

The Prime Minister is to preside over the meetings of the Ministers. Ordinarily, his opinion is followed by the ministers is considered to be their leader by the ministers. out it is wrong

to suppose that the Prime Minister can simply refuse to consider the opinions of other ministers It is not desirable that the Prime Minister should creat a grievance among his followers without any rhyme or reason It is the duty of the Prime Minister to meet the point of view of his followers It should not be forgotten that the relation between the Prime Minister and his colleagues is not the same as the relation between the American President and the members of the Cabinet In the case of U S A. the ministers are the servants of the President and the latter can dismiss them at his pleasure But in the case of India, the ministers are not the servants of the Prime Minister They are as much the representatives of the people as the Prime Minister himself The difference is one of degree and not of kind But there is one factor which cannot be overlooked The Prime Minister is the leader of his party and the leader of his nation A general election is primarily an election of a Prime Minister The Prime Minister sets out his policy in the Election Manifesto He addresses party meetings and gives his support to the candidates at the time of the General Elections and bye-elections It is he who gets a mandate from the peopte As such, the Prime Minister wields great influence both in Parliament and in the Ministry

The Prime Minister may be incharge of a department or not, but it is his duty to co-ordinate the work of the various departments. He must make up the deficiency that may arise in any department If any minister is attacked in Parliament and he is not strong enough to defend himself, the Prime Minister must come to his rescue He is the leader of his party and the leader of the House of the People.

As in England, the Prime Minister of India prepares the time table of the Parliament It is he who decides as to when the Parliament is to meet and for how long its session is to last. He has also to decide as to how much time is to be devoted to Government business It is he who has to make authoritative pronouncements of Government policy in the Parliament He may not be incharge of the departments of finance and foreign affairs, but the ministers incharge of those departments have to keep themselves in constant touch with the Prime Minister

The Prime Minister has a lot of patronage in his hands It is on his advice that the President is to appoint the ministers, ambassadors, Judges, Governors and other important officers holding key posts.

The constitution provides that it is the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation The Prime Minister is also to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for If the Parliament so requires, the Prime Minister has to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council of Ministers

To borrow the language of Prof. Laski, the Prime Minister is "central to its (cabinet) promotion, central to its life and central to its death No cabinet can fail to take its complexion from what he is and does in its destruction". But it must not be forgotton that the Prime minister is not a Caesar. He is not an unchallengeable oracle. His views are not dooms His real position depends upon his popularity with the people and his capacity to carry his followers along with him.

☞ **Q. 24 What is the relation between the Prime Minister and the President ?**

Ans The President of India is the titular or constitutiononal head of the Union of India. He can be compared to the King of England. Like the British Premier, the Prime minister of India is the real head He along with the ministers carries on the actual administration of the country The President acts upon his advice All things are done by the Prime Minister and his Cabinet in the name of the President. All appointments made by the President are really made by the Prime Minister The constitution provides that the Ministers shall hold office during the pleasure of the President In actual practice, this power is exercised only on

the advice of the Prime Minister.

According to the constitution, the President is authorised to make rules for the smooth and efficient working of the government business and the distribution of portfolios, but actually, all these powers are to be exercised by the Prime Minister.

In times of emeigeney, the President has been given innumerable powers. These powers virtually make the President a dictator However, all these powers are to be exercised by the President only with the advice and consent of the Prime Minister

The Prime Minister is the link between the President and the Cobinet It is the Piime Minister who gives systematic account of the administration of the country to the President.

It shall be the duty of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation , to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for , and if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council

CAAPTER VI

Union Legislature

Q 25. Explain the composition of the Council of States ?

Ans. The Parliament of India is to consist of two houses, viz , the Council of State and the House of the People

The Council of States is to consist of 250 members. Twelve members are to be nominated by the President and the remaining 238 are to be the representatives of the states The distribution of the seats to be filled by the representatives of the states is to be in accordance with the provisions contained in the

IV Schedule. *There is no equality of the representation of the states in this House* In this matter, this Upper House differs from the Upper House in America where every state has equal representation in the Senate In the case of India, 145 seats have been allotted to Part A states, 53 seats have been allotted to Part B states Part C states have to send 7 members only In the case of Part A states, the number alloted to each state varies from 6 for Assam to 31 for U P In the case of Part B states, the representation of states varies from 4 to 11 In the case of Part C states, Ajmer and Coorg, Bilaspur and Himachal Pradesh, and Manipur and Tripura as groups have to send one member each and the rest are to send one member each.

The nominated members are to be those persons who have special knowledge or practical experience in respect of such matters as literature, science, art and social service

The representatives of Part A and Part B states are to be elected by the elected members of the Legislative Assemblies of the states in accordance with the system of proportional representation by means of single transferable vote. The representatives of Part C states are to be chosen in such manner as may be prescribed by Parliament

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Q 26. Explain the composition of the House of the People ?

Ans The House of the People is to consist of not more than 500 members, Out of these, two members are to be nominated to give representation to the Anglo-Indians in India and the rest are to be elected directly by the voters in the states For election purposes, states are divided, grouped or formed into territorial constituencies. The number of members to be allotted to each constituency is to be fixed in such a way that there shall be not less than one member for every 7½ lacs of the population and not more than one member for for every 5 lacs of the population. The ratio between the

number of members alloted to each territorial constituency and the population of that constituency as ascertained at the last preceding census is to be the same throughout the the territory of India. The election of the House of the People is to be on the basis of adult suffrage. This means that every citizen who is less not less than 21 years of age and is not otherwise disqualified on ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, has the right to vote

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Q. 27 Discuss the duration of Houses of Parliament ?

Ans. The Council of states is a permanent House It cannot be dissolved Its members are elected for six years One-third of them retire after every two years The House of the People has a maximum duration of 5 years. But this period of five years may be extended by Parliament for a period not exeeeding one year at a time. In the case of Proclamation of emergency, the life of the House of the People cannot be extended for six months beyond the ceasing of the operation of Proclamation

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Q 28. What are the qualifications required for the membership of the Parliament ?

Ans According to Article 84, no person is to be chosen to fill a seat in Parliament unless he is a citizen of India, and possesses such other qualifications as may be prescribed by Parliament. In the case of Council of States, he should not be less than 30 years of age In the case of the House of the People he should not be less than 25.

A person shall be disqualified for being chosen as a member of Parliament if he holds any office of profit under the Government of India or the Government of any State, or if he is of unsound mind, or if he is an undischarged insolvent, or if he has ceased to be a citizen of India or has voluntarily acquired citizenship of a foreign state or acknowledges allegiance to a foreign state, or if he is so disqualified by or under any law made by Parliament.

Q 29 When does a member of Parliament vacate his seat ?

Ans A member of Parliament vacates his seat in the following cases which are given in Article 101 of the constitution :—

1 If a person is a member of both Houses of Parliament, he must vacate his seat in one of the two House If he is elected to both the Union Parliament and a State Legislature, he must resign his seat in the state legislature If he does not do so, his seat in the Parliament shall fall vacant at the expiry of the period specified in the rules framed by the President.

2 If a person incurs any of the disqualifications mentioned in Article 102 of the constitution, he must vacate the seat. Those disqualifications relate to insolvency of the member, unsoundness of the mind etc

3 A member may resign his membership of the Parliament If for a period of 60 days, a member of either House of Parliament without permission of the House is absent from all meetings, the House may declare his seat vacant

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Q 30. What are the money Bills and what is the procedure for passing them ?

Ans Article 110 of the constitution defines a Money Bill. According to it, a Bill is to be deemed a Money Bill if it

contains only provisions dealing with all or any of the following matters :—

1. The imposition, abolition, remission, alteration or regulation of any tax.

2 Regulation of the borrowing of money or the giving of any guarantee by the Government of India or the amendment of any law with respect to any financial obligation undertaken by Government of India.

3 The custody of the Consolidated Fund or the Contingency Fund of India

4 The appropriation of money out of the Consolidated Fund of India

5 The declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure.

6. The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a state

A Bill shall not be deemed to be a Money Bill simply because it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licenses or fees for services rendered, or because it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority for local purposes. If a question arises as to whether a particular Bill is a money Bill or not, the decision of the Speaker of the House of the People is to be final.

Procedure for passing a Money Bill.

No Money Bill is to be introduced in the Council of States It can originate only in the House of the People When that Money Bill is passed by the House of the People, it has to be sent to the Council of States for its recommendations The Upper House has to return the Bill to the House of the People with its recommendations within 14 duys from the date of the

receipt of the Bill The House of the People may accept or reject all or any of the recommendations of the Council of the States If the House of the People accepts any amendment recommended by the Council of States, the Bill is considered to have been passed with those amendments If the Lower House does not accept any recommendation of the Upper House, the Money Bill is considered to be passed by both House in the same form in which it was passed by the House of the People

If a Money Bill is passed by the House of the People and sent to the Council of States, but is not returned to the House of the People within 14 days, the Money Bill is considered to be passed by both Houses at the expiry of the said period in the form in which it was passed by the House of the People.

It is clear from above that the Council of States has neither initiative nor determining voice in the matter of the Money Bills All that it can do is to make recommendations which may or may not be accepted

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Q 31 What is the financial procedure in Parliament ?

Ans (*a*) The financial procedure of the Indian Parliament is similar to that of the British Parliament. Article 112 provides that the President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for the year. The estimates of expenditure must show separately the sums required to meet expenditure described by the Constitution as expenditure charged upon the Consolidated Fund of India, and the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India A clear distinction should be made between expenditute on revenue account and other expenditure.

(*b*) The term "Consolidated Fund" is taken from British constitutional practice It means a single general fund made

of all the funds of the Union into which all revenues are paid and out of which all normal expenditure is met The object of this Fund is to enable the Treasury and the Parliament to deal with the revenues of the Union as a whole instead of allotting a particular tax to a particular expenditure

(c) According to Article 112 (3), the following expenditure shall be *expenditure charged on the consolidated Fund of India* :—

1 Emoluments and allowances of President and other expenditure relating to his office.

2 Salaries and allowances of Chairman and Deputy Chairman of the Council of States and Speaker and Deputy Speaker of the House of the People.

3. Debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges

4 Salaries, allowances and pensions of Judges of the Supreme Court, the Federal Court and the High Courts of India

5 Salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India.

6 Any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal.

7 Any other expenditure declared by the Constitution or by Parliament by law to be so charged.

(*d*) It is to be noted that the expenditure charged on the Consolidated Fund of India is not submitted to the vote of Parliament But either House of Parliament is at liberty to discuss the estimates of this expenditure. The other expenditure is submitted in the form of demands for grants to the House of the People No demand for grant can be made except on the recommendation of the President.

(*e*) When grants have been made by the House of the People, a Bill is introduced to provide for the appropriation

out of the Consolidated Fund of India of all moneys required to meet the grants so made by the House of the People, and the expenditure charged on the Consolidated Fund of India No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant. If the amount authorised by the Appropriation Act is found to be insufficient, the President has to lay before Parliament another statement showing the estimated amount of expenditure

(f) The House of the People is empowered to make any grant in advance in respect of the estimated expenditures for a part of any financial year pending the passing of the Appropriation Act for the voting of such grant and the passing of the Appropriation Act in relation to that expenditure, to make a grant for meeting an unexpected demand upon the resources of India and to make an exceptional grant.

(g) Parliament cannot take the initiative in the case of a Money Bill or an amendment. That can be done only by the President except in the case of an amendment making provision for the reduction or abolition of any tax No Bill which would involve expenditure from the Consolidated fund of India shall be passed by either House of Parliament unless the President recommends it for consideration It is clear that in financial matters, the initiative lies with the Ministry Moreover in financial matters, it is the House of the People and not the Council of States, which has real and effective powers

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Q. 32. What are the Provisions for the removal of a deadlock between the two Houses of Parliament ? Compare these provisions with those for the State Legislature.

Ans (a) There is no possibility for a deadlock in Parliament as regards the Money Bills The reason is that after a money bill has been passed by the House of People, it is to be transmitted to the Council of States for its recommendations The Council of States has to return the Bill to the House of the

People with its recommendations within fourteen days. The Lower House may accept or reject all or any of the recommendations of the Council of States and the money bill is considered to be passed in the form which is given to it finally by the House of the People If the Council of States does not return the bill with its recommendations within fourteen days of its receipt, money bill is deemed to be passed by both Houses at the expiry the said period in the same form in which it was passed by the Houses of People. It is evident that there can be absolutely no occassion for a deadlock over the passing of a money bill.

(b) However, there is a possibility of a deadlock between the two Houses of the Parliament as regards the passing of bills other than the Money Bills Article 108 of the Constitution provides that if after a Bill has been passed by one house and transmitted to the other House, and the Bill is rejected by the other House, or the Houses finally disagree as to the amendment to be made in the Bill or more than six months elapsed from the date of the receipt of the Bill by other house without the Bill being passed by it, President may notify to the Houses his intention to summon them to meet in a joint sitting This intention may be given by message or notification When President has notified his intention to summon the two Houses to meet in a joint meeting, neither House can proceed with the Bill

After this, President has to summon the Houses to meet in a joint sitting for the purpose specified in a notification If at the joint sitting of the two Houses, the Bill is passed by the majority of the total number of members of both Houses present and voting, it shall be deemed to have been passed by both Houses A joint sitting can be held and a Bill passed even if a dissolution of the House of the People has intervend since the President notified his intention to summon the Houses to meet together It is to be noted the will of the House of the People is bound to prevail at the joint sitting on account of its numerical majority. These provisions have been borrowed from the Government of India Act, 1935, and the Constitution of Australia. In the latter country, a joint sitting of the two House is also the ultimate remedy.

The procedure for the resolving of the deadlock in the case of States Legislature was bound to be different and is actually different The remedy of the joint sitting of the two Houses of the Parliament had to be provided because there is Federal Government under the Constitution, and the Council of States, which is a House of the Units of the Federation, could not be ignored It had to be given its proper importance.

(c) The procedure for the passing of the Money Bills in the State Legislature is absolutely the same as in Parliament and hence need not be repeated Under the circumstance, there is no possibility of any deadlock The language of Article 198 is very clear on this point

As regards bills other than Money Bills, Article 197 provides that if after a bill has been passed by the Legislative Assembly and is transmitted to the Legislative Council, but the bill is rejected by the Council, or more than three months pass from the date on which the bill was laid before the Council without the bill being passed by it, or the bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may pass the Bill again in the same or subsequent session with or without amendments suggested or agreed to by the Council, and transmit the bill to the Council If after the bill is so passed for the second time by the Assembly and transmitted to the legislative Council, but the bill is rejected by the Council, or more than one month passes from the date on which the Bill is laid before the Council without the bill being passed by it, or the bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the bill shall be deemed to have been passed by the Houses of the Legislature in the form in which it was passed by the Assembly for the second time

Q 33. What are the powers and functions of the Union Parliament ?

Ans The Union Parliament has the power to make laws relating to all subjects on the Union and the Concurrent List affecting all parts of India One State or many States may

authorise the Goverment of India to legislate on certain matters and in that case Parliament can pass laws on those subjects although they are given in the State List When the constitutional machinery breaks down in a State and a proclamation is made to that effect by the President of India, the state legislature is superseded and in that case, the Union Parliament has the right to make laws for that state even on subjects that were given in the State List Article 249 permits the Parliament to legislate on any matter in the State List if the Council of States passes the resolution by a two-thirds majority declaring such matter o matters to b of National importance and interest The Union Parliament can legislate for the whole of India or any part of India on any matter in the Union, State or Concurrent List to give effect to any treaty, agreement or convention with any foreign Power The Union Parliament can amend the constitution by a two-thirds majority

It is true that there is no other legislative body in the country superior to it, but its laws can be declared null and void by the Supreme Court if they in any way conflict with the Constitution or encroach upon the sphere allotted to the states by the Constitution

The members of the Cabinet must belong to the Parliament If they were not members of Parliament at the time of their appointment, they must get themselves elected as members of either House of Parliament within six months of their appointment The Parliament controls these ministers by asking questions, supplementary questions, passing resolutions, votes of censure or no-confidence. The ministry can be criticised at the time of debate on the annual Budget or at the time of supplementary grants

The Parliament controls the national finance The Government cannot levy taxes, borrow money or spend any money without the premission and authority of Parliament and in the manner prescribed by Parliament. But this does not apply to those items of expenditure which are a charge on the national revenues Those items are the following :—

1. The emoluments and allowances of the President and other expenditure relating to his office ;

2 The salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People ;

3. Debt charges for which the Government of India is liable includingi nterest on sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and redemption of debt ,

4. (a) The salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court ;

(b) the pensions payable to or in respect of Judges of the Federal Court ,

(c) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in a Province corresponding to a State specified in Part A of the First Schedule ,

5 The salary, allowances and pension payable to or in respect of Comptroller and Auditor-General of India ;

6. Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ,

7 Any other expenditure declared by this Constitution or by Parliament by law to be so charged

The question has been raised as to whether the Indian Parliament is a sovereign law-making body or not The answer is that it is not so in the British sense In that country, Parliament can do anything but make a man a woman and vice versa No court of law can declare a law to be ultra vires if it has been passed by Parliament. In the case of India, that is not the case. The Supreme Court

can declare any law to be ultra vires, if it conflicts in any way with the Indian Constitution. It is well known that the Court declared the Preventive Detention Act to be invalid Moreover, Indian Parliament does not enjoy exclusive powers to amend the Constitution Certain important provisions of the Constitution can be amended only with the consent of the states Moreover, powers of Indian Parliament are restricted because India has a federal system and not a unitary system

☞Q. 34 Explain the position of the Speaker of the House of the People

Ans Article 93 provides that the House of the People has the right to choose the Speaker who is to preside over its meetings Article 94 says that the Speaker shall vacate his office if he ceases to be a member of the House of the People He may, at any time, by writing to the Deputy Speaker, resign his office He may be removed from his office by a resolution of the House of the People passed by a majority of all the members of the House But no resolution for the purpose of removing the Speaker can be moved unless at least 14 days' notice has been given of the intention to move the resolution It is further provided that whenever the House of the People is dissolved the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution When the office of the Speaker is vacant, his duties are to be performed by the Deputy Speaker Article 96 provides that the Speaker is not to preside at any meeting of the House of the People where a resolution for his removal from the office is under consideration But he can attend the meeting. The Speaker has the right to speak and can take part in the proceedings of the House of the People when a resolution for his removal from office is under consideration He also has the right to vote, except in case of an equality of votes

Article 110 provides that if any dispute arises as to whether a particular Bill is a Money Bill or not, the decision of the Speaker is final This provision has been borrowed from England where such a power was given to the Speaker under

the Parliament Act of 1911.

The position of the Indian Speaker is analogous to the position of English Speaker He is expected to be impartial while conducting the meetings of the House of the People. He can turn out any member from the House. Members can speak only with his permission In all cases of disputes concerning the House of the People, his ruling is final It is expected that conventions regarding the Speaker will be set up on the same lines as they exist in England.

Shri Mavlankar is the Speaker of the Indian Parliament.

Q. 35 Discuss the constitution and powers of the Supreme Court of India ?

Ans. Chapter IV of Part V of the Constitution deals with the constitution and powers of the Supreme Court. The relevent Articles are 124 to 147

Its Constitution

Article 124 provides that the Supreme Court of India shall consist of a Chief Justice of India and not more than seven other Judges. But the number of judges of the Supreme Court can be increased by Parliament.

Every Judge of the Supreme Court is to be appointed by President after consultation with such of the Judges of Supreme Court and of the High Courts as the President may think necessary. In the case of an appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted.

Its tenure.

Once appointed, a Judge of the Supreme Court is to hold office until he attains the age of 65 He is to hold office during good behaviour. However, a Judge may resign his office by writing to the President. He may be removed by an order of President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority not less than two-third of the members of

that House present and voting has been presented to the President in the same session for his removal on the ground of proved misbehaviour or incapacity Parliament is to regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Judge

Qualifications

A person is not to be appointed a Judge of the Supreme Court of India unless he is a citizen of India and has been for at least five years a Judge of High Court, or has been for at least ten years an advocate of a High Court, or is a distinguished jurist in the opinion of the President Every Judge has to take an oath in the prescribed manner

Every Judge is entitled to such privileges and allowances and to such rights in repect of leave of absence and pension as may from time to time be determined by Parliament But there is to be no variation to the disadvantage of a Judge after his appointment The Chief Justice gets a salary of Rs 5000/- and other Judges get Rs. 4000/-

When the office of the Chief Justice is vacant, the duties of the office are to be performed by that Judge of Supreme Court who is appointed for the purpose by the President

Ad Hoc Judges.

The Constitution contains a novel provision for the appointment of Ad Hoc Judges Thus, if at any time there is no quorum of the Judges of the Supreme Court to hold or continue a session, the Chief Justice of India may, with the previous consent of the President, request in writing the attendance as an Ad Hoc Judge for the necessary period of a Judge of a High Court. The Judge thus requested must be one who is otherwise qualified to be a Judge of the Supreme Court It is the duty of that Ad Hoc Judge to attend the sittings of the Supreme Court for the necessary period and, while doing so he is to have all the jurisdiction, powers and privileges and duties of a judge of the Supreme Court Article 128 also provides that the Chief Justice of India may at any time, with the previous consent of the President, request a retired judge of the Supreme

Court or the Federal Court to sit and act as a Judge of the Supreme Court. It is to be noted that the consent of the retired Judge is necessary for making him to do the job.

The Supreme Court is the Court of Record and as such possesses all the powers of such a Court including the power to punish people for its contempt.

Powers of Supreme Court.

Sir Alladi Krishnsawami Ayyar says, "The Supreme Court in the Indian Union has more powers than any Supreme Court in any part of the world " It has original, appellate and advisory jurisdiction.

(i) **Original Jurisdiction.**

(*a*) As regards *original jurisdiction*, it has the right to hear any dispute between the Government of India and one or more states, or between the Government of India and any state or states on one side and one or more states on the other. In these cases, the disputes must involve a question on which the existence or extent of a legal right depends But the original jurisdiction does not cover a dispute to which a Part B State is a party, if the dispute arises out of any provision of a treaty, agreement, convenant or similar instrument which was entered into or executed before the commencement of the present Constitution and has continued in operation after 26 January, 1950 No case lies in a dispute to which any state is a party, if the dispute arises out of any provisions of a treaty, agreement etc., which provides that the said jurisdiction shall not extend to such a dispute

(b) Articles 32 empowers the Supreme Court to issue directions or orders in the nature of the writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, or any of them, for the enforcement of fundamental rights. It is to be noted that this jurisdiction is not exclusive It is concurrent High Courts of States have also been granted similar powers

(*ii*) **Appellate Jurisdiction**

There are two aspects of the appellate jurisdiction of

Supreme Court In the first place, the Supreme Court has been given the power to hear appeals which involve the interpretation of the Constitution It is immaterial whether those are civil, criminal or other proceedings. Secondly, there are appeals in civil or criminal cases

(*a*) Constitutional Cases

As regards constitutional cases, Article 132 provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of the constitution Where the High Court has refused to give such a certificate, the Supreme Court may grant special leave to appeal from such judgment, decree or order Where such a certificate is given or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that the question has been wrongly decided and, with the leave of the Supreme Court, also on any other ground

(*b*) Civil Cases

As regards the appeals in the civil cases, Article 133 provides that an appeal shall lie to Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies that the amount or value of the subject matter of the dispute was and is not less than Rs 20,000/- or such other sum as may be fixed by the Parliament, or the judgment, decree or final order involves some claim respecting property of like value, or the case is a fit one for appeal to the Supreme Court If the High Court certifies that the case is a fit one for appeal, it must also certify that the appeal involves some substantial question of law Any party appealing to Supreme Court may also urge that a substantial question of law regarding the interpretation of the Constitution has been wrongly decided It is to be noted that no appeal lies to the Supreme Court from the judgment, decree or final order of one judge of the High Court.

(*c*) Criminal Cases

As regards appeals in criminal cases [illegible] provides that an appeal shall lie to the Supreme Court from any

Constituent Assembly "There has been considerable difference of opinion amongst jurists and political thinkers on the expediency of placing on the Supreme Court an obligation to advise the head of the state on difficult questions of law In spite of arguments to the contrary, it was considered expedient to confer advisory jurisdiction upon the Federal Court under the existing constitution by Section 213 of the Act. Having given our best consideration to the arguments pro and con, we feel it will be on the whole better to continue this jurisdiction even under the new Constitution It may be assumed that such jurisdiction is scarcely likely to be invoked, and if, as we propose, the court is to have a strength of ten or eleven judges, a pronouncement by full court may well be regarded as authoritative This can be insured by requiring that references to the Supreme Court for advice shall be dealt with by the full court". It is to be noted that the Supreme Court of the U S A refused to give advice to the American President when a request was made to that effect.

Special Leave to appeal

Article 136 provides that the Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in India. But nothing shall apply to any judgment, determination, sentence or order passed by any court or tribunal constituted by or made under any law relating to the Armed Forces

Power of Review

Article 137 says that the Supreme Court shall have power to review any judgment pronounced or ordermade by itself

Enlargement of Jurisdiction

Article 138 provides for the enlargement of the jurisdiction and powers of the Supreme Court by Parliament with respect to any matter contained in the Union List The Supreme Court is also to have such further jurisdiction and powers as the Government of India and the Government of any State may by special agreement confer on it But Parliament has to give

effect to this agreement by passing a law.

Ancillary Jurisdiction

As regards the ancillary powers of the Supreme Court, Article 140 provides that Parliament may by law make provision for conferring upon the Supreme Court such supplementary powers as are necessary or desirable for the purpose of enabling the Supreme Court more effectively to exercise its jurisdiction

Other Powers

Parliament may by law confer on the Supreme Court power to issue directions, orders, or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibitions, Quo-Warranto and Certiorari, or any of them, for any purposes other than those mentioned in Article 32 (2) Article 32 (2) also empowers the Supreme Court to issue writs for the enforcement of the fundamental rights.

According to Article 317, President has the power to remove from his office the Chairman or any member of the Public Service Commission on the ground of misbehaviour after the Supreme Court on reference being made to it by the President, had on inquiry reported that the Chairman or some member may be removed The Supreme Court, has also jurisdiction to go into disputes arising out of or in connection with the election of a President or Vice-President under Article 71

The law declared by the Supreme Court is binding on all the Courts in India. It is the duty of all authorities in India to help the Supreme Court in its work and enforce its judgments Supreme Court has power to secure the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself Supreme Court has been given the right to make rules for regulating its practice and procedure. The Supreme Court is to exercise the jurisdiction and powers of the Federal Court under the existing law till such time the Parliament provides otherwise.

It is clear from above that the Supreme Court is over-burdened with jurisdiction of various kinds. It is the final interpreter of the Constitution. Its powers are more than the Supreme Court of the U S. A , Supreme Court of Canada and the High Court of Australia The significance of the Supreme Court was emphasised by Shri M. C. Setalvad, Attorney-General for India, on the occasion of the inauguration of the Supreme Court in January, 1950, in these words : "The writ of this cout will run over territory extending to over two million square miles inhabited by a population of about 330 millions. It can truly be said that the jurisdiction and powers of this court in their nature and extent are wider than those exercised by a highest court of any country in the Common-wealth or by the Supreme Court of the U. S. A. The detailed enumeration of fundamental rights in the Constitution and the provisions which enable them to be reasonably restricted will need wise and discriminating decisions On the court will fall the delicate and difficult task of insuring the citizen the enjoyment of his guaranteed rights consistently with the rights of the society and the safety of the state".

☞ Q. 36 What is the position of the Supreme Court with regard to the Constitution ?

Ans. It has been rightly observed that "a Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the constitution and a tribunal for the determination of disputes between the constituent units of the federation". As the Supreme Court occupies the position of the Federal Court, it is the final interpreter of the Constitution and also its guardian.

Article 132 provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution Where the High Court has refused to give such a certificate, the Supreme Court may grant special leave to appeal from such judgment, decree or final order. Where such a certificate is given, or such leave is granted, any party

in the case may appeal to the Supreme Court on the ground that the question has been wrongly decided and, with the leave of the Supreme Court also on any other ground. The verdict of the Supreme Court is final. The Supreme Court alone can say as to what is the meaning of the Constitution and its interpretation cannot be questioned anywhere in the country.

The Supreme Court can declare a law unconstitutional or ultra vires if that law has been passed by Parliament but is upon a subject which is exclusively in the State List Similarly, the Supreme Court can declare a law unconstitutional and ultra vires if the law has been passed by a state legislature but is on a subject which is in the Union List As regards the Concurrent List, if a state-law conflicts with a Union law relating to the same subject, the Union law prevails and the state law is void to the extent to which it is repugnant to the Union law The case is otherwise if the state law has received the assent of the President The Supreme Court has the right to declare such a law unconstitutional.

The Supreme Court has the authority to declare unconstitutional and void any law, whether it is made by Parliament or a state legislature, which in any way violates any fundamental right guaranteed by the Constitution.

It is to be noted that a law is not to be declared invalid on the ground that there has been irregularity of procedure in the legislature or there was no previous recommendation or sanction of the President or Governor, if the Bill has been duly assented to by the President or the Governor as the case may be.

The relationship of the Supreme Court with the Indian Constitution may be explained in the following words· 'This Court has no more important functions than that which devolves upon it, the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge, harmoniously with the other, the duties entrusted to it by the Constitution".

CHAPTER VII

The State Executive

Q 37 Discuss the method of the appointment of a Governor and the tenure of his office.

Ans There was a lot of controversy regarding the method of the appointment of a Governor It was suggested in the Draft Constitution that the Governor may be elected. But it was pointed out that if there was to be an election of a Governor, there was every possiblity of frequent deadlocks between the Governor on the one hand and the Chief Minister on the other. Both parties could maintain that they represented the will of the people and were not bound to submit to each other. Ultimately, it was decided that the Governor of a state should be appointed by the President and Article 155 of the Constitution makes a provision to that effect The same system prevails in Canada where the Lieutant-Governor of a province is appointed by the Governor-General on the advice of the Prime Minister of the Dominion Government

The Constitution is silent on the question as to whether the President can appoint anybody he pleases as Governor or he has to make the appointment on the recommendation of the Prime Minister It is hoped that a convention will grow that the President will appoint that the person alone as Governor who has been recommended by the Prime Minister and who is acceptable to the ministry of the particular state to which he is to be sent

No person is to be appointed a Governor who is not a citizen of India and who has not completed the age of 35 He is not to be a member of either House of Parliament or any state legislature If he holds such a position, he is deemed to vacate the same when he becomes the Governor. Governor is not to hold any other office of profit.

The Governor is to hold office during the pleasure of the President. Ordinarily, his tenure of office is to last for 5 years But there is nothing to prevent the same person from being appointed Governor for another term of five years. Governor may resign his office by a writing addressed to the President A Governor can be removed by the President, but the Constitu-

tion is silent as to the grounds on which the President can remove him.

A Governor has to take an oath or affirmation at the time of entering upon his office.

☞ Q. 38 What are the powers of a Governor of a State?

Ans. Article 154 provides that the executive power of the state shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.

(1) The Chief Minister of a state is to be appointed by the Governor and the other ministers are to be appointed by the Governor on the advice of the Chief Minister. The Ministers are to hold office during the pleasure of the Governor.

(2) Unlike the provisions relating to the Union Government, the Governors of the states are empowered to act in discretion in certain cases. If any question arises whether any matter is such in which the Governor can act in discretion or not, the decision of the Governor in his discretion is final. The validity of anything done by the Governor is not to be called in question on the ground that he ought not to have acted in his discretion. The question whether any, and if so what, advice was tendered by ministers to the Governor is not to be inquired into by any court.

(3) All executive action of government of a state is to be taken in the name of the Governor. Orders and other instruments are to be made and executed in the name of the Governor and their validity is not to be questioned on the ground that it is not an order or instrument made or executed by the Governor. The Governor shall make rules for the more convenient transaction of business of the government of the state. This he does in his discretion.

(4) According to Article 167, it the duty of the Chief Minister of a state to communicate to the Governor of the State

all decisions of the Council of Ministers relating to administration of the affairs of the state and proposals for legislation. The Chief Minister is also to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for. If the Governor so requires, the Chief Minister has to submit for the consideration of the council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. The Governor of a state has the powers to grant pardons, reprieves, or remissions of punishment or to suspend, remit or commute any sentence of any person convicted of any offence against any law of a state.

(5) Article 213 empowers the Governor to promulgate ordinances It is provided that if at any time the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require But this power can be exercised by the Governor only when the Legislative Assembly of a state is not in session. If a state has also a legislative Council, the ordinance can be promulgated by the Governor only when both the Houses of the legislature are not in session.

(6) A Governor is not to promulgate any ordinance without instructions from the President if a Bill containing the same provisions would have required the previous sanction of the President for its introduction into the legislature, or he would have deemed it necessary to reserve a Bill for the consideration of the President, or an Act of the legislature of the states containing the same provisions would have been invalid without the assent of the President.

(7) An ordinance promulgated by Governor has the same force and effect as an Act of the state legislature assented to by the Governor Every ordinance has to be laid before the Legislative Assembly or before both the Houses. The ordinance ceases to operate at the expiry of 6 weeks from the re-assembly of the legislature. It ceases to operate earlier if it is disapproved

earlier by the legislature. The ordinance can be withdrawn by the Governor at any time If an ordinance makes a provision which will not be valid if enacted in an Act of the legistature, it shall be void

It is to be noted that the ordinance-making power of the Governor is not to be exercised by him in his discretion. He has to exercise this power with the aid and advice of the ministers

(8) When a bill has been passed by the state legislature, it has to be presented to the Governor The Governor may assent to it or withhold his assent or reserve the Bill for the consideration of the President When a Bill is presented to Governor for his asseint, he may return the same to legislature with a message for re-ceonsideration in whole or in part He may suggest amendmens It is the duty of the state legislature to consider his suggstions without delay. If the Bill is passed again by the state legislature with or without amendment and presented to the Governor for assent, the Governor shall not with-hold his assent If in the opinion of the Governor, a Bill would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is designed to fill by the Constitution, he shall not assent to it, but shall reserve it for the consideration of the President. The President may assent to the Bill or direct the Governor to return it to the state legislature with a message for re-consideration. The state legislature must consider the suggestion within six months

(9) Like the President of India, Governor has the right of "opening address", of addressing and sending message to the legislature and summoning, proroguing and dissolving the legislature. He possesses the power of causing the annual financial statement to be laid before the state legislature He has also the power of making demands for grants and recommending Money Bills

(10) Although the Governor is the head of a parliamentary system of government in the state, he has certain discretionary powers when he does not consult his ministers. Moreover, when

the President issues a proclamation that the machinery of the state has failed and he takes over the administration of the state in his own hands, it is through the Governor that the President acts. As such, the Governor comes to occupy a very important position of power and influence

It is desirable to refer to the following observations of a Special Bench of the Calcutta High Court in the case of **Sunil Kumar Bose and others V The Chief Secretary to the Government of West Bengal** (1950) -"The Governor under the present constitution cannot act except in accordance with the advice of his ministers Under the Government of India Act, 1935, the position was different The Governor could do certain acts in his discretion, that is, without asking for the advice of any minister, he could do certain acts in his individual capacity that is, only after consulting his ministers but he was not bound, when acting in his individual capacity to follow the advice of his ministers Under the present Constitution, the pawor to act in his discretion or in his individual capacity has been taken away and the Governor, therefore, must act on the advice of his ministers This is the constitutional position as explained to us by the Advocate-General and we accept his view"

☞Q. 39 What is the position of ministers in a state? What is their relation with the Governor?

Ans 1. According to Article 154, the executive power of the state shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance to the constitution. Article 163 provides that there shall be a Council of Ministers with the Chief Minister at the head to *aid and advise* the Governor in the exercise of his functions, except insofar as he is required to exercise his functions in his discretion If any question arises whether any matter is or is not a matter in which Governor is required to act in his discretion, the decision of the Governor in his discretion shall be final. The validity of anything done by the Governor shall not be called in question on the ground that he ought not to have acted in his discretion. A question whether

any. and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any Court.

(2) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister. The ministers are hold to office during the pleasure of the Governor. In the states of Bihar, Madya Pradesh and Orissa, there shall be a minister incharge of tribal welfare who may be also incharge of the welfare of the Scheduled Castes and back-ward classes The Council of Ministers shall be collectively responsible to the Legislative Assembly. A minister has to take an oath of office and secrecy in the prescribed form before the Governor. A minister who for any period of six consecutive months is not a member of the Legislature of the state shall cease to be a minister at the expiry of six months The salaries and allowances of ministers shall be such as the legislature of the state may from time to time by law determine. It is clear that this provision differs from the one in the Government of India Act 1935 In that Act, the legislature could not reduce the salaries of the ministers Under the new constitution, the legislature can express its feelings of disapproval of the policy of a minister by reducing his salary to a nominal figure, say Re. 1. The new provision is in accordance with the parliamentary form of Government. There is a similar procedure at the Centre.

(3) Article 167 provides that it is the duty of the Chief Minister to communicate to the Governor of the state all decisions of the Council of Ministers relating to the administration of the affairs of the state and proposals for legislation It is also his duty to furnish such information relating to the administration of the affairs of the state and proposals for legislation as the Governor may call for. If the Governor so requires, it is the duty of the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council of Ministers.

(4) We have a parliamentary set-up in the states. On the

whole, the Governor has to act according to the advice of the ministers. It is the ministers who have to formulate the policy of the state and carry out the same. It is they who prepare the Budget It is they who initiate legislation No law can be passed by the state legislature if the ministry is opposed to it. If the ministry has a majority in the state Assembly, the Governor dare not go against their advice. If he does so, he will have to face the music He shall have to find an alternative ministry which may not be possible. He is bound to leave the affairs of the state in the hands of the ministers He may advise them on a particular point, but it is not necessary that they must act according to his advice. When the Governor promulgates ordinances, he does so only on the advice of the ministers. It is true that the Governor is allowed to act in his discretion, but the Constitution rarely provides for its exercise The only solitary example is to be found in para 18 of the VI Schedule which provides that until a notification is issued under that pargraph, the Governor of Assam shall carry on the administration of a tribal area specified in Part B as the agent of the President While doing so he will be acting so in his discretion. Thus, it is clear that the field of the discretionary powers of the Governors is negligible

(5) The case is otherwise in times of emergency. If the President declares by a Proclamation that the machinery of the state has failed and takes over the administration of the state in his own hands, the ministers are put on the shelf All powers may come in the hands of the Governor as the agent of the President. But it may be pointed out that such a case happens only in rare cases and not in normal times.

Q. 40. Write a note on the position of the Advocate-General for a state?

Ans Article 165 provides that the Governor of a state shall appoint a person who is qualified to be appointed a judge of a High Court to be Advocate-General for the state. It shall be the duty of the Advocate-General to give advice to the Government of the state upon such legal matters as may be referred or assigned to him by the Governor. It is also his duty to

perform other duties of a legal character which may be given to him by the Governor It is also his duty to discharge the functions conferred on him by the Constitution or any other law for the time being in force. The Advocate-General is to hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine.

CHAPTER VIII
State Legislature

☞Q. 41 Explain the composition and powers of the State Legislatures ?

Ans Article 168 provides that in the States of Bihar, Bombay, Madras, Punjab, Uttar Pradesh and West Bengal, there shall be two Houses of the State Legislature. In other states, ther will be only one House. Where there are two Houses, their names are Legislative Assembly and Legislative Council Where there is only one House, that is known as the Legislative Assembly. Article 169 provides for the abolition or creation of Legislative Councils in the states.

The Legislative Assembly of each state shall be composed of members chosen by direct election on the basis of adult suffrage. The territorial constituencies are to be so arranged that there shall not be more than one representative for every 75,000 of the population It is to be seen that the total number of members in the Legislative Assembly of a state shall in no case be more than 500 or less than 60. The size of the Legislative Assembly is to depend upon the population of the state and it is to vary from 60 to 500.

As regards the composition of the Legislative Councils, the total number of members in the Legislative Council of a state is not to exceed one-fourth of the number of members in the Legislative Assembly of that state But the total number of members in the Legislative Council of a state is in no case to be less than forty

Until Parliament provides otherwise, the composition of Legislative Council of a state is to be as follows :—

1. One-third of the total number of the members of the Council shall be elected by electorates consisting of members of municipalities, district boards and other local authorities.

2. One-twelth shall be elected by electorates consisting of graduates of three years' standing residing in the state.

3. One-twelfth shall be elected by electorates consisting of persons engaged for at least three years in teaching in educational institutions within the state, not lower in standard than secondary schools.

4 One-third shall be elected by members of the Legislative Assembly from those persons who are not members of the Assembly

5 The remainder shall be nominated by the Governor from the persons having special knowledge or practical experience in literature, science, art, co-operative movement and social service.

It is to be noted that the members of the Legislative Councils are to be partly nominated and partly elected. The election is an indirect one and on the basis of proportional representation by the single transferable vote Five-sixth of the total number of members of the Council are to be indirectly elected and one-sixth are to be nominated by the Governor.

Powers of State Legislatures :

The state legislature has the power to make laws on all those subjects which are given in the State List Normally, it has exclusive jurisdiction to pass laws on these subjects. However, in certain cases, the state legislature is superseded by the Union Parliament In the first place, the Union Parliament can frame laws on a subject which is included in the State List if the Council of States declares by a resolution passed by a two-thirds majority, that the subject has acquired a national importance. Secondly, the President of India may authorise the Union Parliament to legislate on state subjects when he issues a Proclamation of Emergency.

A state legislature can also pass laws on the subjects included in the Concurrent List. However, a state law becomes null and void if it conflicts with a Union law on the same subject.

The state legislature controls the finances of the state. Excepting those items of expenditure which are charged on the revenues of the state, all state expenditure has to be submitted to the state legislature in the form of demands for grants. The legislature may reject or reduce the amount asked for It cannot increase the amount No tax can be levied without the approval of the legislature

Under the new Constitution, the Council of Ministers is collectively responsible to the state Assembly If the Assembly withdraws its support from the ministry, the latter has to resign or advise the Governor to dissolve the House. The legislature can supervise and influence the policies and actions of the ministers by means of asking question, discussion of the budget, the moving of adjournment motions etc , in the legislature.

It is to be noted that the prior sanction of the President is necessary for the introduction of certain types of bills in the state legislature. Certain other types of Bills passed by a state legislature cannot become Acts until they receive the assent of the President, after being reserved for his consideration Moreover, the control of the state legislature on the state executive is not complete. So far as the Governor acts in his discretion, the executive is not responsible to the legislature The laws passed by the legislature of Assam do not become applicable to the Scheduled Areas and Tribunal Areas until the Governor of the State so decides

It follows from above that the federal system introduced in India has a distinct unitary bias The state executive is not completely responsible to the state legislature.

Q. 42. What is the duration of the Legislative Council and Legislative Assembly of a state?

Ans. The life of the Legislative Assembly of every state is to be five years The expiry of five years shall operate as a dissolution of the Assembly But the Assembly can be dissolved earlier by the Governor While a Proclamation of Emergency is in operation, the life of Legislative Assembly of a state may be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

The Legislative Council shall not be subject to dissolution As nearly as possible, one-third of the members shall retire on the expiry of every second year in accordance with the provisions made by Parliament by law. It is clear that tenure of office of members of a Legislative Council is to be six years

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Q 43 What is the position of the Second Chambers in the State Legislatures ?

Ans The position of the Legislative Councils in the state Legislatures is very weak It is much weaker than the position of the House of Lords after the passing of the Parliament Act of 1911.

As regards the Money Bills, Legislative councils have practically no control When a money Bill is passed by Legislative Assembly, it is sent to the Legistative Council The Legislative Council has to send back the Money Bill within 14 days of its receipt with its recommendations or amendments The Legislative Assembly may accept or reject all or any of the recommendations of the Legislative Council Even if the Legislative Assembly does not accept any recommendation of the Legislative Council, the Money Bill is deemed to have been passed by both Houses in the form in which it is passed by the Legislative Assembly. It need not be stated that a Money Bill originates only in the Legislative Assembly and cannot be introduced in the Legislative Council Both in the matter of initiation and passing of the Money Bills, Legislative Assembly has complete control. All that the Legislative Council can do is

that it can delay the Money Bills for fourteen days This period is less than that which exists in England. As regards Bills other than Money Bills, if a Bill is passed by the Legislative Assembly, but is rejected by the Council or more than three months pass from the date on which the Bill is laid before the Council without the Bill being passed by it, or the Bill is passed by the Council with amendments to which the Assembly does not agree, the Legislative Assembly may pass the Bill again in the same session or in any subsequent session with or without amendments suggested by Council. If the Bill is passed for the second time by the Assembly and transmitted to the Council, but is rejected by the Council, or more than one month passes from the date on which the Bill is laid before the Council without the Bill being passed by it, or the Bill is passed by the Council with amendments, to which the Assembly does not agree, the Bill is deemed to have been passed by the House of the Legislature of the state in the form in which it was passed by Assembly for the second time.

It is clear from above that the Legislative Councils are very weak They cannot act as revising Chambers. Their function is merely advisory or dilatory It is to be noted that in case of England, the House of Lords exercises substantial control over ordinary legislation If an ordinary Bill has to be passed without the consent of the House of Lords, that must be passed by the House of Common in three consecutive sessions. In the case of states in India, the Bill need be passed only twice and that may be in the same session Moreover, in England, even according to the latest amendment, a period of one year must intervene between the second reading in the first session and third reading in the third session. In the case of India, the period is hardly more than four months Thus, it does not serve the function of a delaying chamber Moreover, the Legislative councils are partly elected and partly nominated The presence of the nominated members must weaken the Councils in the eyes of the people Even the elections to the Legislative Councils are indirect. These are bound to have an adverse effect on the position and prestige of the Councils.

Q 44 What are the pros and cons for the creation of second chambers in the state Legislatures ?

Ans. At the time of the making of the present Constitution, there was a lot of controversy as to whether provision should be made for second chambers in the state Legislatures or not. After a lot of discussion, the constitution provided for second chambers only in the states of Bihar, Bombay, Madras, Punjab, the United Provinces and West Bengal Article 169 also provided for the abolition and creation of the Legislature Councils in the states Dr Ambedkar remarked thus . "The procedure adopted in Article 169 for the creation and abolition of a Legislative Council is that the matter is really left with the lower chamber, which by a resolution may recommend either of the courses that it may decide upon In order to facilitate any change made either in the abolition of the second chamber or in the creation of a second chamber, provision is made that such a law shall not be deemed to be an amendment of the constitution in order to obviate the different procedure which has been provided for the amendment of the Constitution."

Points in favour of Second Chamber.

1. Those who are in favour of a second chamber argue that a second chamber is necessary to put some effective restraint on the lower House The necessity for such a chamber has become great because millions of illiterate people have been given the right to vote under the new Constitution "The mad craze to vest all power in the hands of the Lower House would lead to disaster. It must be vested in the hands of those who are literate and have wise judgment." The composition of the Legislative Council shows that one-sixth of its members are going to be those members who have special knowledge and pratical experience in literature, science, art, co-operative movement and social services. Such persons are bound to do some useful work

2 It is pointed out that "a second chamber prevents hasty legislation. A single chamber is in danger of being rash and one-sided and swayed by emotion or passion. If there are two

chambers, the measures passed by one will be scrutinized by the other, with the result that the laws passed finally will be more carefully analysed and digested''

3 It is also pointed that "a second chamber provides an instrument to give adequate representation to minorities, professions and other economic groups Distinguished and experienced persons who do not care to fight elections can be nominated to the second chamber " It is to be noted that the Constitution provides that one-sixth of the members of the Legislative Councils should be distinguished and experienced persons

(4) The second chambers actually created in the states are not democratic. Their position is merely advisory. Ultimately, the will of the Assembly prevails Both in the case of money Bills and ordinary Bills, it is the Assemblies that have complete control.

(5) Moreover, although second chambers have been created in six states, final power has been given to the Assemblies of those states to abolish them. Similarly, the Assemblies of the states which have not been given second chambers are allowed to create second chambers by merely passing a resolution with certain majorities

Points against Second Chamber.

1 Those who oppose the creation of the second chambers in the States argue that the second chambers are practically useless. A critical examination of the powers of the Legislative Council shows that the Councils are practically helpless. They are so weak that they cannot effectively control or direct the course of legislation Their position is merely advisory. The recommendations made by the Council may be completely ignored by the Legislative Assembly.

2. The creation of a second chamber involves unnecessary wastage of money and energy, particularly when the second chambers have been given no powers They can delay Money Bills only for fourteen days. Ordinary Bills cannot be delayed

for more than 4 months. For interposing delay for such a short time, a second chamber need not be created The same purpose can be served by the Governor returning a bill to the Assembly for reconsideration, or reserving a Bill for the assent of the President.

3 It is also pointed out that second chambers have always been re-actionary These second chambers are bound to delay or interfere with the passage of social legislation. There is so much rush of work in the field of legislation that it is not possible to pass the Bills even once. It is difficult to pass the bills twice as the procedure demands wherever a second chamber exists.

(4) It is difficult to find suitable men for two chambers. Difficulty is already being experienced to find suitable candidates for Assemblies alone It is useless to add to the headache particularly when there is no substantial advantage The people need not be burdened with the salaries of the members of the Legislative Councils Money to be spent on elections can also be saved.

CHAPTER IX
State Judiciary

☞Q. 45. Explain the state judiciary under the new Constitution

Ans. Chapters V and VI of Part VI of the constitution of India deal with the question of state judiciary Article 214 provides that there shall be a High Court for each state. Every High Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for its contempt (215).

High Courts

Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem necessary to appoint. But the Judges so appointed shall at no time exceed in number such maximum number as the President may from time to time, by order, fix in relation to that Court (Art 216).

Every Judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

Every Judge is to hold office until he attains the age of 60. But a Judge may resign his office by writing to the President A Judge may be removed by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge. The office of a judge shall also be vacated by his being appointed by the President to be a judge of the Supreme Court or by his transfer by the President to any other High Court within the territory of India.

A person is not qualified to be appointed a Judge of a High Court unless he is a citizen of India and has for at least ten years held a judicial office in India, or has for at least ten years been an advocate of a High Court in any state. Every person appointed to be a judge of a High Court has to take an oath or affirmation before entering upon his office.

No person who has held office as a judge of a High Court after the commencement of the present Constitution shall plead or act in any court or before any authority within the territory of India. This means that no judge of a Higd Court will be allowed to practise in any court after his retirement. This is a departure from the old procedure At present, many retired judges of the High Courts are practising in India This provision is to apply even to those persons who act as judges even for a short period.

Judges of the High Courts are to be paid salaries such as Rs. 4000/- for the Chief Justice and Rs. 3500/- for other judges

Every judge is entitled to such allowances and rights in respect of leave of absence and pension as may from time to time be determined by law made by Parliament. But neither the allowances of a judge nor his right in respect of leave of absence or pension are to be varied to his disadvantage after his appointment.

After consulting the Chief Justice of India, the President may transfer a judge from one High Court to another High Court in India When a Judge is so transferred, he shall be entitled to receive in addition to his salary some compensatory allowance as may be fixed by Parliament

When the office of Chief Justice of a High Court is vacant or when a Chief Justice is unable to perform the duties of his office, President may appoint another judge of the High Court to perform those duties in place of the Chief Justice

As in the case of the Supreme Court, provision has been made for utilizing the services of the retired judges of the High Court Article 224 provides that the Chief Justice of a High Court for any state may at any time, with the previous consent of the President, request a retired judge of any High Court, to sit and act as a judge of his High Court When such a retired judge of a High Court sits and acts as a judge, he is entitled to such allowances as President may by order determine He is also to have all the jurisdiction, power and privileges of a judge of that High Court.

Powers of High Courts

1 The Constitution does not define the jurisdiction of the High Courts in a direct manner. It merely says that the High Courts have the same jurisdictions which they had at the time of commencement of the Constitution. It is provided that the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of their judges in relation to the administration of justice, shall be the same as immediately before the commencement of the Constitution. With regard to those High Courts which had no original jurisdiction with respect to any matter concerning the revenue or concerning any act ordered or done for collection, it is provided that this restriction shall not apply

to the exercise of such jurisdiction in future Thus, all the High Courts have been brought to the same level as the Presidency Courts formerly were. It appears that it would have been better if the fathers of the Constitution had, as in the case of Supreme Court, put down in black and white the powers of the High Courts.

2. Article 226 provides that every High Court shall have power to issue to any person or authority orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari, or any of them for the enforecment of the fundamental rights as given in Part III of the Constitution and for any other purpose. It is clear that the writs can be used not only for enforcing fundamental rights, but for any other purpose as well

3 Article 227 provides that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The High Court may call for returns from the lower courts, may make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts and prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts. The High Court may also settle tables of fees to be allowed to the Sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders. But nothing in this Article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

4 According to Article 228, if the High Court is satisfied that a case pending in a subordinate court involves a substantial question of law as to the interpretation of the Constitution, it shall withdraw the case and may either dispose of the case itself, or determine the question of law and return the case to the court from which it was withdrawn and the said cuort has to dispose of the case according to the judgment of the High Court on the point.

5 Article 229 provides that appointment of officers and servants of a high Court shall be made by the Chief Jusitce

of the Court or such other judge or officer of the court as the Chief Justice may direct. The administrative expenses of a High Court, including all salaries, allowances and pensions payable to the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the court shall form part of that Fund These provisions have been made for the purpose of making the judiciary independent of the control of the executive

6. Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a high Court from, any state specified in the First Schedule

7. Some High Courts exercise jurisdiction in areas which are outside that state in which they have their principal seat In the case of such High Courts, restrictions have been imposed on the powers of the legislatures of those states to make laws regarding their jurisdiction It is provided that in such a case, the legislature has no power to increase, restrict or abolish that jurisdiction. If any such area is situated within a Part A state or Part B state, the legislature of that state has no power to abolish that jurisdiction

Subordinate Courts.

As regards the subordinate courts, Article 233 provides that appointment of persons to be, and the posting and promotion of District judges in any state shall be made by the Governor of the state in consultation with the High Court exercising jurisdiction in relation to such states A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him after consultation with the State Public Service Commmission and with the High Court of the state Article 235 provides that the control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service

of a state and holding any post inferior to that of the District Judge, shall vest in the High Court

CHAPTER X

Public Services in India

☞ Q. 46 Explain the position of the services under the Union and the States as provided in the Indian Constitution

Ans. The necessity of an efficient civil service for administration is pointed out in the following words of the Report of Joint Select Committee on the Indian Constitutional Reforms, "The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure their positions during good behaviour, but required to carry out the policy upon which the Government and legislature eventually decide" It is no wonder that Part XIV of the Constitution is devoted to the position of the services under the Union and the states.

1 Article 309 provides that Acts of the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any state. But it shall be competent for the President, Governor or Rajpramukh, as the case may be, to make rules regulating the recruitment and conditions of service of the services until provision is made by an Act of the appropriate legislature

2. Article 310 provides that every person who is a member of a Defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President Similarly, every person who is a member of a civil service of a state or holds any civil post under a state, holds office during the pleasure of the Governor or the Rajpramukh of the state, as the case may be. But in spite of this provision, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a state, is appointed to hold such a post may provide for the payment to him of compensation, if before the expiry of an agreed period that post is

abolished or he is required to vacate that post for reasons not connected with any misconduct on his part

3 According to Article 311, no person who is a member of a civil service of the Union or of all-India service or a civil service of a state or holds a civil post under the Union or a state shall be dismissed or removed by an authority subordinate to that by which he was appointed. No such person shall be dismissed or removed or reduced in rank until he has been given *reasonable opportunity* of showing cause against the action proposed to be taken in regard to him But this provision will not apply where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his coviction on a criminal charge, or where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that it is not reasonably practicable to give to that person an opportunity of showing cause, or where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the state, it is not expedient to give to that person such an opportunity If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause, the decision of the authority empowered to dismiss or remove or reduce in rank shall be final It is to be noted that if this discretion is not exercised properly, the right of a person to be heard is bound to become illusory

4 Article 312 provides that if the Council of States declares by a resolution that it is necessary in the national interest to do so, Parliament may by law provide for the creation of one or more all-India services common to the Union and the states and regulate the recruitment and conditions of service of persons appointed to any such service The services known as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this Article

5 All the laws in force immediately before the commencement of the Constitution and applicable to any public service or any post which continues to exist after the commencement

of the Constitution, shall continue in force so far as consistent with the provisions of the Constitution But they can be changed later on Moreover, every person who having been appointed by the Secretary to State of a civil service of the Crown in India continues to serve under the Government of India or a state, shall be entitled to receive the same conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary matters or similar rights.

The constitution and powers of the Public Service Commission are discussed in the next question.

☞ Q. 47. Explain the composition and powers of Public Service Commissions under the Contitution

Ans 1 Article 315 provides that there shall be a Public Service Commission for the Union known as the Union Public Service Commission and a Public Service Commission for each state known as the State Public Service Commission But two or more states may agree that there shall be one Public Service Commission for that group of states If a resolution to that effect is passed by the Legislatures of all the states concerned, Parliament may by law provide for the appointment of a Joint State Public Service Commission to serve the needs of those states. Such a law may provide for incidental and consequential matters in order to give effect to the purposes of the law The Union Public Service Commission may agree to serve all or any of the needs of the states if the Governor or Rajpramukh requests and the President approves of it.

2. According to Article 316, the Chairman and other members of a Public Service Commission shall be appointed by the President in the case of a Union Commission or a Joint Commission. In the case of a State Commission, the Chairman and the members are to be appointed by the Governor or Rajpramukh of the state, as the case may be As nearly as possible, one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State. A member of a Public Service Commission shall hold office for a period of six years But he must retire at the age

of 60 if he is a member of a State Commission or at the age of 65 in the case of Union Commission even if he has not held office for full six years But a member of a Public Service Commission may resign earlier by sending his letter of resignation to the President, Governor or Rajpramukh, as the case may be A member of a Public Service Commission may be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has on inquiry reported that the Chairman or any other member ought to be removed President may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court He is to remain suspended until the President passes orders on receipt of the report of the Supreme Court President may by order remove from office the Chairman or any other member of a Public Service Commission, if the Chairman or the member is adjudged an insolvent, or engages during his term of office in any paid employment outside the duties of his office, or is in the opinion of the President unfit to continue in office by reason of infirmity of mind or body If the Chairman or any other member of a Public Service Commsssion is in any way concerned in any contract or agreement made by the Government of India or the Government of State or participates in any way in its profits, he shall be deemed to be guilty of misbehaviour.

(3) The President, Governor or Rajpramukh, as the case may be, is authorised to make regulations to determine the number of members of the Commission and their conditions of service, and to make provision with respect to number of members of the staff of the Commission and their conditions of service However, it is specifically provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment

(4) On ceasing to hold office, the Chairman of the Union Public Service Commission shall be ineligible for further employment under the Government of India or any state The same applies to the Chairman of a State Public Service Commission He can be appointed the Chairman or an ordi-

nary member of the Union Public Service Commission. He can also be appointed the Chairman of any other State Public Service Commission. But he is not to get any other employment either under the Government of India or that of a State. Likewise, a member of a State Public Service Commission is entitled to be appointed as the Chairman or any ordinary member of the Union Public Service Commission or the Chairman of that or any other State Public Service Commission. But he too is not to get any employment under the Government of India or a state.

Functions of Public Service Commissions

Article 320 provides that it shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the States respectively It shall also be the duty of the Union Public Service Commission, if requested by two or more states, to assist those states in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

1. on all matters relating to methods of recruitment to civil services and civil posts,

2. on the principles to be followed in making appointments of the civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers,

3. on all disciplinary matters affecting a person serving under the Government of India or a state in a civil capacity, including memorials and petitions,

4. on any claim by a person in Government Service that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done by him in the execution of his duty should be paid out of the Consolidated Fund of India or of a State, and

5 on any claim for the award of a pension in respect injuries sustained by a person while serving in a civil capacity under the Government of India or a State or the Crown.

It shall be the duty of a Public Service Commission to advise the Government on any matter referred to it by the President, Governor or Rajpramukh The President, Governor or Rajpramukh, as the case may be, may make regulations specifying the matters in which either generally or particularly, it shall not be necessary for a Public Service Commission to be consulted but the regulations so made by the President, Governor or Rajpramukh shall be laid for not less than fourteen days before each House of Parliament or State Legislature, as the case may be These regulations shall be subject to such modifications as both Houses of Parliament or State Legislature may make during the session in which they are placed before it

Article 321 provides that an Act made by Parliament or State Legislature, as the case may be, may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the service of any local authority or any corporate body constituted by law or any public institution

In order to maintain the independence of the Union and State Service Commissions, it is provided that their expenses shall be charged on the Consolidated Fund of India or of a State, as the case may be

Article 323 provides that it shall be the duty of the Union Public Service Commission to present annually to the President a report as to the work done by the Commission On receipt of the report, it is the duty of the President to cause its copy along with a memorandum explaining the cases in which the advice of the Commission was not accepted, to be laid before each House of Parliament Similarly, it shall be the duty of a State Commission to present annually to the Governor or Rajpramukh a report of its work A similar report is to be submitted by a Joint Commission Both in the case of a State Commission and a Joint Commission, it is the duty of the Governor and the Rajpramukh of a state to place before the legislature of the state a copy of the report and also a memorandum of the cases in which the advice of the Commission was not accepted and also the reasons for the same

CHAPTER XI

Relations between Union and Centre

☞Q 48 Outline the relations between the Union and the states

Ans. In the case of a unitary state, the units are merely the agents of the Central Government, and as such their only function is to carry out the orders from the Centre Obviously, that is not so in case of a Federal Government which is based on the principle of division of powers Special provisions have been made for regulating the legislative, administrative and financial relations between the Union and the units

LEGISLATIVE RELATIONS.

1 Article 245 provides that Parliament may make laws for the whole or any part of India and the legislature of a state may make laws for the whole or any part of the state Parliament has exclusive power to make laws regarding matters given in the Union List Legislatures of Part A and Part B states have exclusive powers to make laws on matters given in the State List Parliament and Legislature of Part A and Part B states have concurrent powers to pass laws on matters given in the Concurrent List. As regards the residuary powers, those are given to the Union Government It may be noted here that the residuary powers are with the units in the U. S A and Australia Indian constitution follows the Canadian model Critics point out that there was no necessity of having three exhaustive Lists. It would have been sufficient to enumerate the powers of the state in one List and to provide that the rest of the powers were with the Union Government At the most, only the State List and the Concurrent List could be drawn up and the rest could be declared to be the residuary powers of the Union Government It appears that the fathers of the Indian Constitution copied slavishly the scheme of the Government of India Act, 1935 They merely tried to improve upon the old scheme in the light of recent experience. They increased the number of items in the Union or Federal List from 61 to 97, the Provincial List or State List from 56 to 66, and the Concurrent List from 36 to 47 matters The sphere of Parliament and the Union Government is enlarged

2. No law made by Parliament shall be deemed to be invalid

on the ground that it would have extra-territorial operation It is pointed out that this provision in the Constitution is superfluous There could have been some meaning in this provision if India had been in any way subordinate to some other power But India under the present Constitution is an Independent Sovereign Republic This provision is merely a remnant of India's past status.

3 Article 247 provides that Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter given in the Union List. It is to be noted that ordinarily the Union laws are to be enforced through the ordinary courts of the state

4 The Constitution gives the Union Parliament power to legislate in respect of matters given in the State List. Thus, Article 249 provides that if the Council of States declares by resolution supported by not less than two-thirds of the members present and voting that it is necessary in the national interest that Parliament should make laws with respect to any matter enumerated in the State List, it shall be lawful for Parliament to make laws for the whole or part of India with respect to that matter while the resolution remains in force Such a resolution does not remain in force for more than one year But the Council of States can pass a fresh resolution and that has the effect of extending the period by another year A law made by Parliament under these circumstances shall cease to have effect on the expiry of six months after the resolution has ceased to be in force.

5 Article 250 provides that while a Proclamation of Emergency is in operation, Parliament shall have power to make laws for the whole of India or any part of India with respect to any matter enumerated in the State List. Such a law shall cease to have effect on the expiry of a period of six months after the Proclamation has ceased to operate.

6. According to Article 252, if it appears to the Legislatures of two or more states to be desirable that any of the matters with respect to which Parliament has no powers to

make laws for the states, should be regulated in such states by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those states, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly Any Act so passed shall apply to such states and to any other states by which it is adopted afterwards by a resolution Any Act so passed by Parliament may be amended or repealed by an Act of Parliament, but shall not be amended or repealed by an Act of the Legislature of that state. It is clear that once Parliament at the request of the State Legislatures occupies the field by an Act, the State Legislatures are excluded from that field This is an indication of the unitary nature of the Constitution.

7 Article 253 provides that Parliament has power to make any law for the whole or any part of India for implementing any treaty, agreement or convention with any other country or any decision made at any international conference, association or other body The object of this provision is to save the Union Government from an awkward position which may be created by the refusal of a state or states to carry out the terms of a treaty which has been entered into by the Government of India Canada had to face such a problem.

8 When a Proclamation has been made by the President that the constitutional machinery of the state has failed, he can declare that the powers of the legislature of the state shall be exercisable by or under the authority of the Parliament. (Art 356).

9 Article 251 provides that if any provision of a law made by the legislature of a state is repugnant to any provision of a law made by Parliament, the law made by Parliament shall prevail and the law made by the legislature of the state shall to the extent of the repugnancy, be inoperative. According to Article 254, if any provision of a law made by the legislature of a state is repugnant to any provision of a law made by Parliament on a subject given in the Concurrent List, the law made by Parliament shall prevail and the law of the State Legislature shall be void to the extent of the repugnancy But if a law made by the legislature of a Part A or Part B state

contains any provision repugnant to the provisions of an earlier law made by Parliament, the law of the State Legislature shall prevail in that state if the Bill was reserved for the consideration of President and has received his assent But it is to be noted that Parliament can make any law on the same matter by which it can amend, vary or repeal the law of the state Legislature.

ADMINISTRATIVE RELATIONS

1 According to Article 256, the executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that state The executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.

2 Article 257 provides that the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union The Union Government can give directions to a state for the construction and maintenance of means of communications which are of national or military importance Parliament can declare highways or waterways to be national highways or waterways The Union Government can give directions to the states to protect the railways within those states If the states have to incur any additional expenditure while carrying out the directions of the Union Government, the latter has to pay for the same

3 According to Article 258, President may entrust to a state with its consent, either conditionally or unconditionally, certain functions which relate to the Union government This enables the Union to make the states as its agents. A law made by Parliament which applies in any state may confer powers and impose duties upon the state or its officers or authority The Union Government has to pay for additional expenditure of the state.

4. A Part B state having any Armed Forces immediately before the commencement of the Constitution may continue to maintain the said forces subject to the general or special order of the President. But those Armed Force shall form part of the Armed Forces of the Union

5 Article 261 provides that full faith and credit shall be given throughout India to public acts, record, and judicial proceedings of the Union and every state. Final judgment or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within the territory according to law.

6, According to Article 262, Parliament may provide for settiement of any dispute or complaint regarding the use, distribution or control of the waters of any inter-state river or river valley Parliament can exclude the jursidiction of the Supreme Court and other courts

7. Article 263 provides that if at any time the President thinks that it shall be in the public interest to appoint an inter-State Council to inquire into and advise upon disputes which may have arisen between states, to investigate and discuss subjects in which some or all the states or the Union have a common interest, and to make recommendations for better co-ordination of policy and action, it shall be lawful for the President to do so While appointing the Council, President can define the nature of its duties, its organisation and its procedure,

Financial Relations

1. The distribution of financial resources between the Union and the states follows the Government of India Act, 1935. Several taxes and duties have been exclusively given to the Union Some taxes have been given exclusively to the states. Certain duties are to be levied by the Union but collected and appropriated by the states Certain taxes are to be levied as well as collected by the Union, but are assigned to the states within which they are leviable Certain taxes are to be levied and collected by the Union but distributed between the Union and the states. Provision is also made for grants-in-aid by the Union to the states

2. The taxes which belong exclusively to the Union are customs, corporation tax, taxes on capital value of assets of individuals and companies, surcharge on income-tax, fees in respect of matters in the Union List, excise duties on tobacco

and all other goods produced in India except alcohlic liquors for human use, opium and other drugs.

3. The taxes which belong exclusively to the states are land revenue, taxes on agricultural income, succession duties on agricultural land. taxes on land and buildings, taxes on mineral rights, opium and Indian hemp, taxes on consumption and sale of electricity, terminal tax, taxes on goods and passengers carried by road or inland waterways, taxes on vehicles, professions, trades and entertainment, sales tax, etc.

4 Stamp duties on Bills of exchange, Bills of lading, insurance policies transfer of shares etc , and excise duties on medicinal and toilet preparations containing alcohol are to be levied by the Union, but are to be collected and appropriated by the states within whose jurisdiction they are levied

5. The following taxes are to be levied as well as collected by the Union, but assigned to the states within which they are leviable · Duties on succession to property other than agricultural land, estate duty in respect of property other than agricultural land, terminal taxes on goods or passengers carried by railway, air or sea, taxes on railway fares and freights, taxes on transactions in stock exchanges and taxes on sale of and advertisements in news-papers

6 The following taxes are levied and collected by the Union, but their proceeds are divided between the Union and the states in a certain proportion : Taxes on income other than on agricultural income and duties of excise as are included in the Union List, except medicinal and toilet preparations President has to distribute the proceeds of income-tax between the Union and the states upto that time when it is fixed by the Finance Commission. The distribution of the Union excise duties is to be made by Parliament

7. Article 275 provides that grants-in-aid shall be made every year by the Union Government to those states which are considered in need of help by Parliament These grants are particularly for the welfare of the Scheduled Tribes. Assam is to be given some special grant. In addition to this, temporary

grants for a period of ten years shall be made to the states of West Bengal, Bihar, Assam and Orissa in lieu of the share of the export duty on their jute products as they used to receive before the commencement of the Constitution

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☞Q 49 Discuss the provisions relating to the official language of the Union and the States?

Ans. Articles 343 to 351 of the Constitution deal with the official language of India and the states. According to Article 343, the official language of the Union shall be Hindi in Devanagari script The form of numerals to be used for the official purposes of the Union shall be the International form of the Indian numerals. But for a period of 15 years from the commencement of the Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement However, the President may, during the above period of 15 years, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union. The same Article empowers the Parliament to provide for the use of the English language or the Devanagari form of numerals for such purposes as may be given in the law after the lapse of 15 years.

Language Commission

Article 344 provides for the appointment of a Language Commission. According to it, the President shall, at the expiry of 5 years from the commencement of the Constitution and thereafter at the expiry of 10 years, by order constitute a Commission which shall consist of a Chairman and other members. The order of the President shall define the procedure to be followed by the Commission to make recommendations to the President as to—

1. the progressive use of the Hindi language for the official purposes of the Union,

2 restriction on the use of the English language for all

or any of the official purposes of the Union,

3 the language to be used for all or any of the purposes concerning the proceedings in the Supreme Court and the High Courts, the Bills and Acts of Parliament and State Legislatures, orders, rules, regulations and bye-laws made by Government of India or the states,

4 the form of numerals to be used for any one or more specified purposes of the Union,

5 any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or one state and another and their use.

While making recommendations, the Commission shall have due regard to the industrial, cultural and scientific advancement of India and the just claims of the non-Hindi speaking areas

Language Committee

The same Article provides for the creation of a Committee consisting of 30 members, of whom 20 members will be from the House of the People and 10 from the Council of States. It shall be the duty of this Committee to examine the recommendations of the Language Commission and report their opinion to the President After consideration of the Report the President may issue directions in accordance with the whole or any part of that report.

As regards regional languages, the Legislature of a State may by law adopt any one or more of the languages in use in the State, or Hindi as the language to be used for all or any of the official purposes of that state Until the Legislature of the state otherwise provides by law, the English language shall continue to be used for those official purposes within the state for which it was being used immediately before the commencement of the Constitution The official language of the Union shall be the official language of communication between one state and another state and between the state and the Union But if two or more states agree that the Hindi language should be the official language for communication between such states,

that language may be used for such communication. If a demand is made by a substantial proportion of the population of a state for the use of any language spoken by them, President may direct that such language shall also be officially recognised throughout that state or any part of that state

According to Article 348, until Parliament by law otherwise provides, all proceedings in the Supreme Court and in every High Court, and the authoritative texts of all Bills to be introduced, of all the Acts passed by the Parliament or state Legislature or Ordinances promulgated by President, Governor or Rajpramukh, and all orders, rules, regulations and bye-laws made by Parliament or State Legislature, shall be in the English language The Governor or Rajpramukh of a state may authorise the use of the Hindi language in the proceedings in the High Court, but this will not apply to any judgment, decree or order passed by the High Court Where the Legislature of a state has prescribed any language other than the English language for use in Bills, a translation of the same in the English language should be published

During the period of 15 years from the commencement of the constitution, no Bill or Amendment regarding the language to be used in the Courts and for the Bills and Acts, can be introduced in Parliament without the previous sanction of the President.

Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a state in any of the languages used in the Union or the State According to Article 351, it shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it serves as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating the forms, style and expressions used in Hindustani and in other languages of India

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Q. 50. Write notes on the following.—Comptroller and Auditor-General of India, Attorney-

General for India, Language Commission, Finance Commission, Inter-State Council, Scheduled Castes and Scheduled Tribes, Commission for investigation of backward classes, Election Commission, Consolidated Fund, Contingency Fund

Ans 1. Comptroller and Auditor-General of India The Comptroller and Auditor-General of India is one of the most important officers under the Constitution of India He is to be appointed by the President of India and can be removed in the same way as a judge of the Supreme Court can be removed. The salary and the other conditions of service of this official are to be determined by the Parliament But neither his salary nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment. Like the judges of the Supreme Court and High Courts, he shall not be eligible for further office either under the Govt of India or under the Government of any State after he has ceased to hold his office. The administrative expenses of the office of Comptroller and Auditor General shall be charged upon the Consolidated Fund of India All these factors ensure his independence in his work

Article 143 provides that the Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by Parliament and shall perform such duties and exercise such powers as were exercisable by the Auditor-General of India before the commencement of this Constitution Those duties require him to see that no public money is spent otherwise than under the sanction of the Parliament The grants made by Parliament and embodied in the Appropriation Act are not to be exceeded or varied No expenditure is to be made outside the Act He is to audit the accounts of the Union and State Governments and prepare their respective accounts

Article 150 provides that the accounts of the Union and the States shall be kept in such form as the Comptroller and

Auditor-General of India may prescribe with the approval of the President According to Article 151, the reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President who shall cause them to be laid before each House of Parliament Likewise, he is to submit the accounts of a State to the Governor, or Rajpramukh of the State and the latter has to cause them to be laid before the legislature of the State.

Attorney-General for India.

According to Article 76, President shall appoint a person who is qualified to be appointed a judge of the Supreme Court to be the Attorney-General for India. It is the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred to him by the President. He is to discharge those functions which are conferred upon him by or under the Constitution or any other law for the time being in force. While performing his duties, he is to have the right of audience in all Courts in India He is to hold office during the pleasure of the President and he shall receive such remuneration as the President may determine According to Article 88, he shall have the right to speak in, and otherwise take part in the proceedings of either House of Parliament, or any joint sitting of the Houses of Parliament, or any committee of Parliament of which he may be named a member. But he shall not be entitled to vote

Language Commission.

For Language Commission, see the question on the Official language of India and the States.

Finance Commission.

Article 280 provides that the President shall, within two years from the commencement of the Constitution and thereafter at the expiry of the every fifth year, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President Parliament may by law determine the qualifications of the members

of the Commission and also the manner in which they are to be selected.

It shall be the duty of the Commission to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be or may be divided between them and the allocation between the States of the respective shares of such proceeds, the principles which should govern the Grants-in-aid of the revenues of the State out of the Consolidated Fund of India, the continuance, or modification of the terms of any agreement entered into by the Government of India with the Government of any Part B State, and any other matter referred to the Commission by the President in the interest of sound finance

The Commission shall determine its procedure and shall have such powers for the performance of its functions as Parliament may grant.

According to Article 281, the President shall cause every recommendation made by the Finance Commission together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament

Inter-State Council.

Article 263 Provides that if at any time it appears to the President that the public interests would be served by the establishment of an Inter-State Council charged with the duties of inquiring into and advising upon disputes which may have arisen between states, investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest, or making recommendations upon any such subjects and in particular recommendations for the better coordination of policy and action with respect to the subjects, it shall be lawful for the President to establish such an InterState Council The President is also to define the nature of the duties to be performed by it and its organisation and procedure

Scheduled Castes and Scheduled Tribes.

According to Article 341, President may, after consultation

with the Governor or Rajpramukh of a State, by public notification, specify the castes, races or tribes which shall be deemed to be Scheduled Castes in relation to that state. Parliament may by law include in or exclude from the list of the Scheduled Castes specified in the Notification any caste, race or tribe.

According to Article 342, President may, after consultation with the Governor or Rajpramukh of a State, by public notification, specify the tribes or tribal communities which shall be deemed to be Scheduled Tribes in relation to that State. But Parliament may by law include in or exclude from the list of the Scheduled Tribes specified in the Notification any tribe or tribal community

According to Article 338, there shall be a Special Officer for the Scheduled-Castes and Scheduled Tribes to be appointed by the President It shall be the duty of that Officer to investigate all matters relating to the safeguards provided for the Scheduled-Castes and Scheduled-Tribes under the Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct. The President shall cause all such reports to be laid before each House of Parliament.

According to Article 339, the President may at any time and shall, at the expiry of ten years from the commencement of the Constitution by order appoint a Commission to report on the administration of the Scheduled areas and the welfare of the Scheduled Tribes The order of the President may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable. The executive power of the Union shall extend to the giving of directions to any such State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled-Tribes in the State

Commission for Investigation of Condition of Backward Classes.

According to Article 340, President of India may by an order appoint a Commission consisting of such persons as he

thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for that purpose by the Union or any State The order of the President is to define the procedure to be followed by the Commission It is the duty of the Commission to investigate the matter referred to it and to present to the President a report setting out the facts as found by them and make the necessary recommendations The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament

Election-Commission

According to Article 324, the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to Parliament and State Legislatures and of elections to the offices of President and Vice-President, shall be vested in the Election Commission The Election-Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners as the President may from time to time fix The appointment of the Chief Election Commissionor and other Election Commissioners shall be made by the President When any other Election Commissioner is appointed, the Chief Election Commissioner shall act as the Chairman of the Election Commission The Chief Election Commissioner shall not be removed from his office except in the manner and on the grounds on which a judge of the Supreme Court is removed. The conditions of Service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment These provisions will secure his independence of action Any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner

Consolidated Funds and Contingency Fund

According to Article 266, all revenues received by the Government of India, all loans raised by the Government by

the issue of Treasury Bills, loans or ways and means advances and all moneys received by the government in repayment of of loans shall form one Consolidated Fund to be known as the Consolidated Fund of India Similarly, all revenues received by the government of state, all loans raised by that government by the issue of Treasury Bills, loans or ways and means advances and all moneys received by that government in repayment of loans shall form the Consolidated Fund of the State. All other public moneys received by or on behalf of the Government of India or the State Government shall be credited to the public account of India or the public account of the State, as the case may be No moneys out of the Consolidated Fund of India or that of a State shall be appropriated except in accordance with law and for the purpose and in the manner provided in the Constitution.

The necessity of a Contingency Fund arises on account of fact that under the new constitution, every item of expenditure requires the prior sanction of the Parliament or the State Legislature, as the case may be. Sometimes, an unexpected demand has to be met and there is no time to get the sanction of the Parliament or State Legislature. Consequently, Article 267 provides that Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled the Contingency Fund of India into which shall be paid from time to time such sums as may be determined by law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditures by Parliament by law under Article 115 or 116. The same Article provides for the creation of the Contingency Fund of the State by State Legislature. That Fund is to be at the disposal of the Governor or Rajpramukh of the State.

☞ **Q. 51. Compare the Indian Federation as provided by the present Constitution with that of America, Australia and Canada:**

Ans 1. The Indian Federation differs from other Federations in many ways. In the Case of U S. A. and Autralia, the

residuary powers are with the units of the federations But in India, we follow the Canadian pattern where the residuary powers are with the Federal Government.

(2) In the case of U S A, every state has been given equal representation in the Senate In the case of India, representation of the states to the Council of States varies from 1 to 31. In the case of Canada also, each province has not equal representation to the Canadian Senate However in that country the four groups into which the provinces have been grouped are given equal representation. Each group sends 24 members to the Senate

(3) In the case of other Federations, there is provision for double citizenship In the case of India, there is only one single citizenship throughout the Union We follow the Canadian system We have also a single integrated judiciary and All-Indian services common to the Union and the States However, there is a provision for the appointment of extra courts by the Union for the enforcement of the Union laws

(4) In the case of U S A, the Governors of the states are elected by the people of the states In the case of Australia, they are appointed by the British Government In the case of Canada, the Lieutenant Governors of the provinces are appointed by the Federal Government In the case of India, the Governors of the States are to be appointed by the President of Idnia

(5) In the case of Canada, the Minister of Justice of the dominion Government has the power to disallow laws passed by the Provincial Legislatures In the case of India, President has the power to reject a Bill passed by the Provincial Legislature, but which has been reserved for his consideration and assent. President has also the power to send back for reconsideration the Bill which has been sent to him for assent.

(6) In the case of U S A and Australia, the distribution of powers is rigid and cannot be altered without the difficult process of amendment of the Constitution It is true that in the case of India also, the consent of the state legislatures is required for amending the provisions with regard to the distri-

bution of powers between the Union and the States, the requirement is more liberal than in the case of U.S A. In the case of U S A, the consent of three-fourths of the states is required, but in India the consent of only one-half of the state legislatures is required

(7) The Indian Federation is over-centralized Union Parliament can pass laws on those matters which are given in the Union List and the Concurrent List In addition to this, the Union Parliament has the power to legislate in respect of matters enumerated in the State List under certain circumstances. Thus, under Article 249, Parliament has powers to make laws with respect to any matter included in the State List for a temporary period, if the Council of States declares by a resolution of two-thirds of its members present that it is necessary in the national interest that Parliament shall have power to legislate over such matters Each such resolution of the Council of States will give a lease of one year to the law in question Similarly, when a Proclamation of Emergency made by a President is in operation, Parliament shall have similar power to make laws on matters included in the State List. Moreover, if the legislatures of two or more states resolve that it shall be lawful for Parliament to make laws with respect to any matters included in the State List, Parliament shall have powers as regards such states Any other State can adopt such Union legislation. Parliament has also been given the power to legislate for any state for the purpose of implementing treaties or international agreements and conventions Similarly, when the President makesa Proclamation that the constitutional machinery of a state has failed, Parliament comes to have the right and authority to make laws for that state The Federal Government has been given the power to give directions to the state on very many matters and it is the duty of the states to comply with those directions Even in normal times, the control of the Union over the states is very great But in times of emergency, the Federal Government of India is transformed into a Unitary Government It has been rightly said that India presents an example of a coercive Union. No other Federation is so strong as that of India. Probably, the German Federal System as pro-

vided in the Weimar Constitution of 1919 could come up to the Indian pattern

(8) It is to be noted that there are four kinds of states provided in the Indian Constitution Those are Part A, Part B, Part C, and Part D states Part A states are the same which were formerly known as provinces. Part B states represent the bigger Indian states e g., Mysore, Pepsu, Rajasthan, Madhya Bharat etc. These states have the same constitution and government as in Part A states There are only a few special provisions for them Part C states are under Chief Commissioners Legislatures have also been provided for them recently The Andaman and Nicobar Islands are included in Part D states They are to be administered by the President acting through a Chief Commissioner or other authority to be appointed by him. The President may make regulations for the peace and good government of any such territory and any regulation so made may repeal or amend any law made by Parliament or any existing law which is for the time being applicable to that territory. It is to be noted that there is no such classification of Units of a Federation in U S. A, Canada or Australia All Units have the same status

(9) In the case of U. S. A. and Australia, the Federal Government was created by an agreement or compact between the sovereign states Like Canada, the Indian Union has been created by transforming the provinces of a unitary state into a Union

☞ Q. 52. On what grounds has the new Constitution of India been criticised?

Ans (1) Indian Constitution has been criticised on many grounds It is pointed out by the critics that the Indian Constitution is largely borrowed from other constitutions and there is hardly anything which can be called indigenous about it. Very many Articles of the Indian Constitution are merely copied from the Government of India Act, 1935 which was so much condemned by the Indian public opinion during the British regime.

(2) It is also pointed out that the Indian Constitution is

over-centralised and the states have been reduced to the position of Municipalities. There is a lot of truth in this criticism But we should not forget the circumstances in which the Constitution has been made.

(3) It is true that the constitution provides for fundamental rights for the Indian citizens But the critics point out that too many limitations have been imposed on those rights.

(4) Critics point out that the Indian Constitution has completely ignored the importance of village communities A mere reference to them in the Directive Principles of State Policy is not enough

(5) Critics also do not attach much importance to the Directive Principles of State Policy. It is pointed out that they are merely moral precepts which need not be cared for by any Government

(6) The officers and other staff of the subordinate judiciary complain that the Constitution does not contain any provision which can make their position secure and independent of the executive.

(7) It is true that the Constitution provides that before a Government servant is dismissed, he will be given a reasonable opportunity to prove his innocence But the Constitution also provides that in certain cases the officer concerned may not be given that reasonable opportunity It rests with the authority empowered to dismiss or remove a person to decide as to whether it is reasonably practicable to give such opportunity or not. His decision is final. It is clear that if such officer uses his discretion improperly, the position of the Government servants will become very weak.

(8) The Constitution provides for the promulgation of ordinances by the President and Governor. Critics point out that such a provision should not have found any place in the democratic Constitution of India Such an institution is a remnant of the days of British Rule There should be no difficulty to summon a new session of Parliament or state legislature whenever any emergency arises The means of communication and

transport do not create any insuperable difficulty Such a procedure is actually followed in a country like England

☞ **Q 53 "The constitution of the Indian Republic, though Federal in form, is unitary in spirit" Discuss**

Ans. This statement refers to the fact that although the constitution of India is a federal one, the Central Government is so very strong that it looks like a unitary government rather than a Federal government This is largely due to the fact that under the new constitution too many powers have been given to the Federal Government Most of the important subjects have been included in the Union List and the Parliament of India is authorised to make laws on them Likewise, many important subjects have been placed in the Concurrent List and the Federal Government has been given superior authority regarding those matters The subjects given in the State List are not so important as those given in the two previous lists Moreover, in times of emergency, all power comes into the hands of the Federal Government and the States are reduced to non-entities. Neither the Units nor the Supreme Court has any hand in deciding as to when a state of emergency exists The Federal Government has been given full authority in this matter Moreover the Council of States is authorised to declare as to what subjects included in the State List are of national importance and consequently within the competence of the Government of India

It is pointed out that the reason why the Federal Government has been made very strong is that the national sentiment in the country is in not very strong and consequently there is the possibility of the centrifugal forces taking the upper hand and thereby breaking up the integrity of the country It is to ward against these dangers that the Federal Government has been made very strong However, whatever the justification, the fact remains that the Federal Government in India is so very strong that it can really be called a unitary Government.

☞ **Q 54 "The new Constitution is quasi-Federal" Discuss**

Ans What this statement means is that although there

is a division of powers between the Federal Government and the Units under the new Constitution and provision is also made for a Supreme Court, the Indian Constitution is not completely Federal, but partly federal and partly otherwise The student is directed to enumerate the large number of powers given to the Federal Government. He should show that the enormous powers of the Federal Government have transformed the Indian Constitution into a Federal Constitution.

Q 55 What are the emergency powers of the President ?

Ans. Please refer to the question on the President of India.

☞ **Q. 56. "We are seeking to lay the foundations of a to alitarian State—a Police State completely opposed to all the principles that we have held aloft during the past few years" (H. V. Kamith). Discuss.**

Ans This statement emphasizes the fact that all powers under the new Constitution have been placed into the hands of the Central Government. It has been given enormous powers of legislation and control There is hardly anything in which the Federal Government cannot interfere. Its power becomes all comprehensive.

The student is requested to refer to the powers granted to the Federal Government vis-a-vis the States. It is obvious that under the new Constitution, a dictatorship can be set up The Indian Constitution resembles the Weimar Constitution of Germany which helped Hitler to establish his dictatorship in that country.

☞ **Q 57. What changes have taken place in the status and position of the Indian States after the independence of India ?**

Ans It is well-known that during the British rule in India, the Government of India exercised the paramount power over the Indian States. The latter were not sovereign in any way. They could not make war or have direct relations with the foreign states. Indian states had absolutely no status in International Law. Indian Princes owed allegiance to the British Crown Their armies could be called upon to take part in those

wars in which the Government of India was involved. The latter protected the states from external aggression and internal disorder It also safe-guarded the rights, privileges and interests of the Indian states and their rulers It also exercised the right of interfering into the internal affairs of the states Succession to the throne of the state was regulated by the Paramount Power The latter had the right to decide all disputed successions and also give its approval to adoption.

Such was the condition when the British Government decided to hand over the administration of India into the hands of the Indians It also declared that after the ending of the British rule in India, the Paramountcy will also lapse The Indian states were given option to join any of the two Dominions of India and Pakistan When such a declaration was made it was feared that every ruler might become independent and thereby bring about the desintegration of the country However, as a result of the efforts made by Lord Mauntbatten, Sardar Patel and Mr V P Menon, the danger was avoided and it is admitted on all hands that the successful tackling of the problem of the Indian states is one of the greatest achievements of the Government of India.

The Government of India had not to face any great difficulty with regard to most of the small states The Nawab of Bhopal tried to create mischief, but he was no match for such a clever fellow as Lord Mountbatten The Nawab of Junagadh acceded to Pakistan in spite of the geographical situation of his state and wishes of her people However, there was a revolt and the Nawab had to run away to Pakistan The State of Travancore took advantage of its situation and tried to assert its independence. However, pressure was brought to force this state to join the Indian Union. As regards Kashmir, the Maharaja refused to join any of the two Dominions and merely entered into a Stand Still Agreement with Pakistan However, when that state was invaded by the raiders, the Maharaja and the people of the State appealed to the Government of India for help and the state acceded to India The Indian armies drove out the raiders from the Kashmir valley The matter was taken to the Security Council by the Government of India. Although

cease-fire was declared from Ist January, 1949, the Kashmir problem is still hanging fire In spite of the opposition of Pakistan the people of Kashmir established their own Constituent Assembly in 1951 Only recently, an agreement was entered into between the Government of India and Kashmir on certain points of common concern Kashmir has led the way by deciding to have an elective head of the state However, it is desirable to point out as to how the difficult problem of about 600 states was tackled successfully

A large number of small states were merged into the neighbouring provinces and ceased to exist as separate entities The process of merger started in January 1948 when twenty-five small states of Orissa merged themselves into Orissa In the same month, 14 states of C P merged themselves into C P The state of Loharu merged itself into the province of East Punjab In June 1948, about 300 small states and petty estates and Jagirs of Gujrat merged themselves into the Bombay presidency.

In order to avoid administrative difficulties, many states formed themselves into Unions. Thus a large dumber of states in Kathiawar combined themselves into the Saurashtra The States of Alwar, Bharatpur, Dholpur and Karauli formed themselves into the Matsya Union, Likewise, the Punjab, states of Patiala, Faridkot, Malerkotla, Jind, Kapurthala, and Nabha formed the Pepsu Union or the Patiala and the East Punjab States Union 35 States of Central India combined themselves into the Vindhya Pradesh.

Certain states like Bhopal and Cooch have been taken over by the Government of India and placed under the control of the Chief Commissioners

Certain states have been integrated into new provinces For example, 24 states of Simla-Hills have been created into the Himachal Pradesh and put under the Lieutenant-Governor.

It is to be noted that a great change has taken place in the system of administration of these states Formerly, these states were the citadels of absolutism and reaction But at present, democratic institutions have been established in all these states.

Like the Governors, the Rajpramukhs of these states have also become constitutional heads Elections have been held in these states and responsible ministries have also been installed. A a result of the agitation, the Government of India passed a law in 1951 by which it established popular institutions in Part C States also

☞ Q 58. Write a note on the important political parties in India.

Ans The important political parties are the Indian National Congress, the Socialist Party of India, The Communist Party of India, the Bharuya Jan Singh, the Kisan Mazdoor Praja Pary and the All-India Hindu Mahasabha

As regards the Indian National Congress, it was started in 1885 and fought for the independence of the country for 62 long years During the period of national struggle for independence, all kinds of people joined the ranks of the Congress for the common objective After the freedom of the country, the Socialists left the Congress. This party became a great force only under the leadership of Mahatma Gandhi During the last general elections, the Congress swept the polls and at present is the strongest single party at the centre and also in most of the states

As regards the aims and policies of the Congress, it seeks unity within the country and hates communalism in every shape and form. It stands for the ideal of a secular state in which all religions enjoy equal status. The state is neutral in matters of religion As regards the economic development of the country, it believes in the idea of mixed economy in which both the state enterprise and private enterprise can find a place In the agrarian field, it stands for the abolition of zamindari and has already done so in certain states The Congress stands for the promotion of the mass literacy, provision of public health services particularly in rural areas, protection of back-ward classes, encouragement of village panchayat system etc The object is to raise the standard of living of the common man and fit him for a life of self-respect. The Congress also stands for international friendship and goodwill It is opposed to imperialism and colonialism in every shape or form.

Northern India However, it did not meet with the success which it hoped to achieve It met strong opponent in the person of Pt. Nehru

The party stands for the rebuilding of India on the basis of Indian culture (sanskriti) and maryada It stands for equality of opportunity and liberty of individual in the social, economic and political fields Its leaders have asked the workers of the Sangh to go to the country-side and entrench themselves there

As regards the Kisan Mazdoor Praja Party, it was set up by Kriplani when he left the Congress on account of differences with Tandon High hopes were raised when Mr Kidwai left the Congress to fight against the parent body However, Kidwai went back to the Congress fold on account of his personal loyalty to Nehru. The party fought the elections, but did not cut much ice At present, negotiations are going on for the merger of K M P P with the Socialist Party

The Akali Party has some following in the Punjab and fought the general elections, but did not achieve much

The Hindu Maha Sabha was created for the purpose of protecting the rights of Hindus against the communalism of the Muslim League It did not enjoy great following because the Hindus were already in the Congress. After the murder of Mahatma Gandhi, it give up political activities for some time However, it decided to fight general elections and some of its members were returned to Parliament, state legislatures and municipalities

English Constitution

CHAPTER I
INTRODUCTORY

☞ Q. 1. What are the sources of the English Constitution ?

Ans The peculiar thing about the English constitution is that it was not drafted by any constituent assembly or any Parliament. The English constitution has grown during the course of many centuries No wonder, the sources of the English constitution are scattered

(*i*) The great constitutional landmarks like the Magna Carta (1213), Petition of Right (1628), Bill of Rights (1688), etc. are an important source of English constitution. Although they were not passed by Parliament, they constitute the fundamental law of the country.

(*ii*) Many statutes or laws were passed from time to time by the British Parliament and these are also an important source of the English constitution. Some of those are the Act of Settlement (1701), Parliament Act of 1911, The Reform Acts of 1832, 18 7 and 1884, The Representation of the People Acts of 1918 and 1928, Act of Union between England and Scotland (1707), The Habeas Corpus Acts of 1679 and 1816, Statute of Westminister (1931), Acts of 1835, 1888 and 1929 dealing with Local Government, Judicature Acts of 1873-76 etc

(*iii*) Common law is another source of the English Constitution. It consists of precedents and customs which are established by usage The prerogatives of the King and privileges of Parliament are based on common law Freedom of person and speech, and the right of trial by jury in criminal cases are based on common law.

(*iv*) Another source is the judicial decisions Bushell's case established the independence of the juries (1670) The case of Howell (1678) established the immunity of the judges. The case of Somersett established the absence of slavery on the English

soil The case of Danby established the doctrine of ministerial responsibility and the equality of all before law According to Dicey, the English Constitution "far from being the result of legislation in the ordinary sense of the term, is the fruit of contests carried on in the courts on behalf of the rights of the individuals"

(*v*) Text books are also a source of constitutional law The books are Anson's Law and Custom of the Constitution, Bagehot's English Constitution, May's "Parliamentary Practice," Dicey's "Law of the Constitution' etc. The importance of these books lies in the fact that all the problems of constitutional law are not covered by legislation or adjudications.

(*vi*) Another source of the English Constitution is the treaties between Great Britain and other countries One such example is the treaty between England and Scotland for the union of the two countries (1707) Another treaty was made between Great Britain and Ireland in 1800 for the union of the two countries

(*vii*) Another fruitful source of the English constitution is the large number of conventions Some of them relate to the King, some to Parliament, some to Cabinet and others to dominions. A detailed discussion of conventions is given below.

☞ Q. 2 What are the salient features of the English Constitutions ?

Ans The British Constitution occupies a unique position in the world. It is the product of the peculiar genius of the Englishmen. It is a constitution of which the Englishmen can rightly boast of

(1) There are many characteristics of the English Constitution. The first characteristic is that it is unwritten. The English constitution is not to be found in any one document as is the case in India or the U S A It is true that some of the constitutional law of England is to be found in the Magna Carta, The Bill of Rights, Petition of Right, Act of Settlement, Parliament Act of 1911, Reform Acts of 1832, 1867, 1884, 1918 and 1928, Acts of Union between England and Scotland (1707), etc. But in addition to these written elements, there are a large number of conventions which play a very important part in the working of the administrative machinery of the country.

It is on account of these conventions that the English Constitution is said to be unwritten.

(2) There is a lot of a difference between theory and practice in the English Constitution. That is why it is said about the English Constitution that "nothing is what it seems, or seems what it is". This is mainly due to the large number of conventions which have grown in England through the course of many centuries It is the existence of these conventions that creates divergence between theory and practice Legally, all the powers are with the King of England, but actually the powers have gone into the hands of the British Cabinet on account of the growth of the Cabinet System in the country by means of conventions. Examples can be multiplied.

(3) Another characteristic of the English Constitution is that it is evolutionary. While we can say that the American Constitution was made towards the end of the 18th century or the present Constitution of India came into force in 1950 or the Canadian Constitution is to be found in the British North America Act of 1867, the same cannot be said of the English Constitution Nobody is its creator. It has grown during the past many centuries Neither Simon nor Edward was its creator.

(4) Unlike England, India, Germany or Ireland, England has nothing which can be called by the name of the fundamental rights of the English. There is no such thing as the Directive Principles of State Policy as are found in the new Constitution of India The freedoms of the Englishmen are guaranteed to them by the ordinary law of the land The British judiciary has played a noble part in this field.

(5) The English Constitution is not rigid but flexible This means that the amendment of the Constitution is easy. It is to be noted that unlike U S A. or India, the ordinary laws and the Constitutional laws of the country can be amended in the same way There is absolutely no difference between ordinary laws and Constitutional laws as regards their amendment In the case of U. S A, the Constitution can be amended only if the two-thirds of the Congress and three-fourths of the states agree to the amendment. But in the case of England, a bill which changes some important aspect of

the constitutional law of the country, can be passed by a bare majority in both the Houses of English Parliament

(6) The British Constitution is unitary and not federal. There is no division of powers between the federal government and the units. All powers are exercised by the Central Government.

(7) England has a parliamentary form of Government. The English King is a constitutional head He ha' no powers at all All power are in the hands of the ministry which is taken from the Parliament and is responsible to the House of Commons It holds office so long as it enjoys the confidence of the House of Commons The actions of the Government are subjected to a critical examination by the members of the House of Commons who are the representatives of the people In this way, the Government is run according to the interests and wishes of the people of England.

(8) Another feature of the British Constitution is the rule of law. To put it bluntly, it merely means that there is the rule of law in England and not of any individuals. It emphasizes the sovereignty of law of the country No person is to be punished unless and until it is definitely proved that he has violated some law of the country. The same law applies to everybody whether he is a poor man or a great official of the Government. The same is the case with the Courts There are no separate Courts for the Government servants. They are not given any privilege.

(9) Another characteristic of the English Constitution is the sovereignty of Parliament In the case of written Constitutions, the legislature is not free to do what it wants It must be guided and controlled by the terms of the Constitution. The Legislature cannot pass any law which is against the Constitution. If it passes any such law, that law is declared as *ultra vires* by the courts of the country. But that is not so in the case of England In this country, the British Parliament can do what it pleases De Lolme was right when he said that the British Parliament can do anything but make a man a woman or a woman, a man. It simply means this that the

British Parliament can do anything which is rational and not absurd.

☞ **Q. 3. "The English Constitution has no real existence" Discuss**

Ans. There is no truth in the statement of Tocqueville that England has no constitution The reason why he made such a statement was that he was a Frenchman. As such, his conception of a constitution was a written document. As he did not find such a document in England, he wrongly came to the conclusion that England had no constitution. It has been pointed out in the previous question that England has a constitution and that is to be found in the great constitutional landmarks, Statutes of Parliament, Common Law, Judicial decisions, treaties and conventions. No attempt has been made in England to put all the fundamental laws at one place The reference has to be made to the constitutional history of England and customs of the country It is for this reason that it has been said that "English constitutional law is a cross between history and custom" Boutmy says, 'The English have left the different parts of the constitution just where the wave of history had deposited them, they have not attempted to bring them together, to classify or complete them, or to make a consistent and coherent whole". Anson says that the English constitution must be found by those who seek it, in statutes, in judicial decisions, in custom, in convention, it is set forth in text-books, it may be learnt in its important feature by the observations of the course and conduct of politics, but in authoritative documentary form it is not to be found The English Constitution is convenient rather than symmetrical, It is like a house built by many hands at different periods.

☞ **Q 4 "The English Constitution is essentially a judge-made one." Discuss.**

Ans. This statement merely emphasizes the important part played by the courts in the growth of English constitutional law According to Prof Dicey, the English Constitution is the fruit of contests carried on in the courts on behalf of the rights

of individuals. A critical study of the lengthy discussion on the rule of law by Prof Dicey will show that most of the rights enjoyed by the English citizens have been guranteed to them by important constitutional decisions In the case of other countries like India, U S A and Ireland, the fundamental rights of the people may be embodied in the constitution, but that is not so in England In this country, the Englishmen enjoy liberty because there are certain judicial precedents which have established those rights Bushell's case established the independence of the Juries (1670) The case of Howell (1678) established the immunity of the Judges The case of Somersett established the absence of slavery on the English soil (1771) The case of Danby established the doctrine of ministerial responsibility and the equality of all before the law In the case of Entick v Carrington (1765), it was held that a warrant to search for and seize the unspecified papers of a named author is illegal In the case of Wilkes v Wood, it was held that a general warrant to search for and capture the papers of an unnamed author was illegal (1765). In the case of Leach v Money, it was held that a general warrant to search or seize an unnamed person was illegal (1765) In the case of Beatty v. Gilbanks, it was held that where people assemble for a lawful object without intending to commit a breach of peace, such a meeting is not an unlawful assembly On the same subject is the decision in Wise v. Dunning There are many other great decisions which have laid down the constitutional law of the country.

☞ Q. 5 "The English Constitution is a part of the Common Law." Discuss

Ans This statement also emphasizes the important part played by the Common Law in England It is to be noted that in only in recent times that Parliament has been forced to turn out a lot of legislative work That may be due to many causes But that was not the case before Most of the work was done in England according to the Common Law of the country which had been developed by the travelling Judges in the course of centuries. That law had been also codified

from time to time By Common Law, the King of England was the source of all powers and authority, unlimited by any restraint whatsoever. Some of the powers of the King have been curtailed by Parliament, but the King has still been left with some of the powers given to him by Common Law. This discertionary power is known as the prerogatives of the King Formerly, Common Law used to regulate the question of succession to the throne of England, but now it is done by the Act of Settlement which was passed by the British Parliament.

☞Q 6 How far is it true to say that the English Constitution is based on the principle of checks and balances ?

Ans A critical examination of the English Constitution shows that there have been provided certain checks and balances which were found to be necessary by experience Thus, although the King is the supreme executive head of the country, he exercises no power, except with the advice and consent of the ministers No order of the King is valid unless and until it is countersigned by some minister. By countersigning, the minister concerned takes up the responsibility for the act of the King

(2) The people of England elect members of Parliament A party having a majority in the House of Commons, can form the ministry The ministers are taken from members of Parliament. They are put in charge of the various departments of the Government. These ministers can be criticised and out-voted in the House of Commons When a ministry is defeated, it must resign But the ministry has also been given the power to hit back The Prime Minister can ask the King to dissolve the Parliament. When so requested, the King has to dissolve Parliament. It is clear that the members of the House of Commons have an effective control over the ministers The ministers also are not at the mercy of the House of Commons. They also can send them home by getting the House dissolved

(3) The ministry controls the civil services, but it also depends upon the latter for the enforcement of its policy.

(4) According to Lord Bryce, "The delicate equipoise of the ministry, the House of Commons, and the nation acting at a general election, is the secret of the smooth working of the British Constitution"

(5) It is to be noted that the Judges in England are appointed by the executive, but once appointed they cannot be turned out. It is these Judges who put a check on the arbitrary power of the executive.

No wonder, the English Constitution is said to be one long system of checks and balances

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☞ Q. 7 "In English Constitution, nothing is what it seems or seems what it is" Discuss

Ans This statement refers to the unreality in the English Constitution. It points out to the divergence between theory and practice While we find one thing in theory, the same thing is different in practice This is partly due to the flexibility of the constitution and partly to the peculiar character of the Englishmen The statement can be illustrated by reference to certain facts of the English Constitution.

(*i*) There was a time when the king of England was absolute. He was the fountain of justice He could make any law He was the head of the State. But during the course of centuries, the English King lost all his powers The present position is that although the King in theory has all his old powers, in actual practice those are exercised by his Ministers The King practically does nothing himself. It is rightly said that King can do no wrong.

(*ii*) Theoretically, British Parliament is the legislative organ and makes all the laws. However, a critical examination of the actual working of the system shows that all legislation originates with the Cabinet and it is the Cabinet that controls the Parliament. It has been rightly stated that the Cabinet legislates with the consent of the Parliament.

(*iii*) Theoretically, the ministers are described as the servants and advisers of the King They can be dismissed at the pleasure of the King. But they are not so in actual practice

They are so important that no order of the king is valid unless it is countersigned by a minister.

(iv) In theory, the British Government can appoint anybody as the Governor-General of a Dominion In practice, the British Government appoints only that person who is approved of by the Dominion. It is well-known that Jinnah was appointed the first Governor-General of Pakistan because he suggested his own name for that office and refused to accept Lord Mountbatten as Governor-General of Pakistan.

(v) In theory, the House of Lords is the highest court of appeal for England Actually, it is the seven LawLords who sit in the House of Lords when the latter sits as the highest court of appeal.

Similar examples can be multiplied to show that in the English Constitution nothing is what it seems or seems what it is

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☞ **Q 8 How far is it correct to say that the English Constitution is "a child of accident and design?"**

Ans There seems to be some truth in the statement. A critical survey of the constitutional history of England shows that many institutions in England came into existence purely by chance There was no conscious effort to create them. It is well-known that the British Parliament is not the result of any conscious effort It just came into being as a result of certain factors It kept on gaining strength on account of certain forces It was again by chance that the Parliament was able to have ultimately the upper hand over the king.

It is usually conceded that the bicameral system has a lot of wisdom behind it There is a lot of controversy in the textbooks on political science regarding the comparative advantages of bicameral and unicameral system. In the last analysis, the bicameral system is considered to be the better of the two But it is well known that the bicameral system was the result of pure chance Up to the time of Edward I, Parliament used to sit in three Divisions or Estates, viz., Clergy, the Barons and Knights and the Townsmen. Even the Model Parliament of Edward I had these three Houses. It was only

by chance that the lower Clergy refused to attend the Parliament The Knights decided to sit with the Burgesses and the higher Clergy decided to sit with the Barons. Thus, it was that two houses came into being.

The same can be said about the Cabinet system in England. It is on account of the Hanoverian succession to the English throne in 1714 and ignorance of the Kings of English language that helped the growth of the office of the Prime Minister The King stopped attending the meetings on account of his ignorance of English and all power passed into the hands of the Prime Minister.

Similar examples could be given to show that many parts of the English Constitution have grown as a result of pure chance No wonder, Strachey said that English Constitution was "a child of wisdom and chance" But it does not mean that the whole of the English Constitution is the result of chance Many important laws have been passed by Parliament from time to time to meet the needs of the nation Undoubtedly, they are the outcome of deliberation Hence, the whole of the English Constitution is not a matter of chance

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☞ Q 9. What do you understand by conventions of the English Constitution and why are they obeyed ?

Ans The importance of conventions in the English Constitution is so very great that the writers charge English Constitution as convention-ridden constitution As a matter of fact, conventions regulate the most fundamental aspects of the British administrative system It is their existence which brings about a fundamental difference between the law of the constitution and its actual working. For the same reason it is stated that in England nothing is what it seems, or seems what it is

The conventions are the unwritten parts of the English Constitution They are also called the Customs of the constitution. Conventions differ from law While law is enacted by a legislature and enforced by the courts, that is not so in the case of conventions. They are neither made by a legislature nor enforced by the courts The very fact that a particular factor is regulated by conventions shows that it cannot be brought before the courts. That is beyond their jurisdiction

Moreover, law is static, while conventions keep on growing just like the growth of the trees The growth of conventions is slow and steady It is not noticed But the change goes on But when a law is to be changed, a formal enactment has to be passed There is no gradual change The change is abrupt

Conventions differ from Common Law. While Common Law is enforced by the courts, conventions do not enjoy that privilege But in one thing, they resemble each other. Neither of them is enacted by the legislature While Common Law is the outcome of judicial decisions, conventions are based on the Customs of the country

The English Constitution has the following conventions :—

(1) When the general elections are over, the king has to summon the leader of the majority party to form the ministry. The Prime Minister forms the ministry and he has a free hand in that matter The ministers are responsible to the British Parliament for whatever happens in their departments. They are also responsible to the House of Commons in their collective capacity for their general policy The ministers remain in office so long as they enjoy the confidence of the House of Commons

(2) When a ministry is defeated in the House of Commons, it has two alternatives before it It can resign forthwith and in that case, the leader of the opposition will form the ministry. The other alternative is that the Prime Minister can go to the King and ask him to dissolve the House of Commons The convention is that when the King is approached with such a request, he must oblige the Prime Minister and dissolve the House of Commons. If as a result of the new elections, the ministèrial party secures a majority in the House of Commons, old ministry goes on If the Ministry is defeated as was the case with Churchill in 1945, the ministry must resign without facing the House of Commons The old Prime Minister cannot ask the King for a second dissolution

(3) The Parliament must be called at least once a year Not more than one year can pass without a Parliament which is the house of the people.

(4) The Prime Minister must belong to the House of Commons. The object of this convention is to emphasize the

importance of the House of Commons which is also the House of the people That was not the convention before There were, Prime Ministers like Lord Salisbury, Lord Palmerstone, Lord North, etc., who belonged to the House of Lords But it is now realised that if democracy has any meaning, the Prime Minister must sit in the House of the people Since the real battles are fought in the House of Commons, the Prime Minister must be there to take an effective part in them His absence must be regretted He must answer for what his colleagues do before the popular chamber The result of this convention was that in 1922, Lord Curzon who was the Leader of the Conservative party at that time, was not allowed to form the Ministry after the resignation of Lloyd George

(5) The election of the Speaker takes place on party lines But once he is elected, the Speaker of the House of Commons becomes a no party man. He stops attending the meetings of his party He becomes a neutral in party politics His behaviour inside and outside the House is that of a neutral Although he is called the Speaker, he does not speak, so that his statements may not be misrepresented The result of this is that the Speaker is returned unopposed from his constituency as long as he likes. He is a so re-elected as Speaker as many times as he pleases. When he retires, he is given a pension.

(6) When the House of Lords sits as the highest Court of appeal for civil and criminal cases in England, it is only the Seven Law-Lords who participate in the discussions There is no legal bar on other members of the House of Lords but the convention says that they must absent themselves from the meetings

(7) When a bill has been passed by both the houses of Parliament, it is sent to the King for his signature Legally, he may approve of it or not But the convention lays down that the King will not use veto power.

(8) Another convention is that when one member from one party has spoken in the House, the next Speaker must belong to the Opposition The reason is that the minority must get an opportunity to express its views on the subject.

(9) The relations of the mother country with the Dominions

are regulated by conventions. Some of the conventions were embodied in the Statute of Westminster in 1931, but many more conventions have grown after that.

Sanction behind conventions The question is that if convention cannot be enforced by courts, what is the reason that they are obeyed? According to Prof. Dicey, conventions are obeyed because the breach of a convention ultimately leads to the breach of a law for which there is punishment. Hence, the conventions have to be obeyed He took the example of annual Parliaments If Parliament was not called for more than a year, the budget will not be passed Any attempt to collect taxes without the authority of Parliament will bring the tax-collectors into conflict with law They may be arrested and put behind the bars In the same way the Mutiny Act which is an annual Act, will lapse In that case it will become difficult to maintain the army. Hence, Parliament has to be called at least once a year. The same is the case if the ministry does not resign after it has lost the confidence of the House

But the critics point out that this explanation of Dicey is not true in the case of all the conventions It is pointed out that no law is broken when the Speaker becomes a party man The same is the case if the King decides to veto a bill passed by Parliament No law is violated if all the members of the House of Lords participate when the House sits as the highest court of appeal There is no breach of law if the Prime Minister is taken from the House of Lords As a matter of fact, many Prime Ministers did belong to this House

It is pointed out by writers like Dr Jennings, Dr Ogg and Lowell that the real sanction behind the conventions is the force of public opinion' It is stated that conventions are like the rules of morality which are adhered to by the people on account of the fear of public opinion Conventions are obeyed because the public opinion will not tolerate their violation There will be a lot of hue and cry if the King were to veto a bill passed by Parliament The public will demand the taking away of the judicial functions from the House of Lords if all of its members were to insist on participating in the discussions when that House sat as the highest court of appeal for England Likewise,

the public opinion demands that the Prime Minister must belong to the House of Commons. The people insist that Parliament must be called regularly and hence the convention of annual Parliaments.

Hence, the real sanction behind conventions, as in the case of ordinary laws also, is the force of the public opinion.

☞ **Q. 10. What do you understand by Sovereignty of Parliament ?**

Ans. In the words of Prof Dicey, "The Sovereignty of Parliament is (from a legal point of view) the dominant characteristic of our political institutions" By Parliament is meant the King, the House of Commons and the House of Lords Sovereignty of Parliament means that Parliament can do anything It is supreme over all. There is no law which is above it. All must obey it

Two Aspects of Sovereignty According to Dicey, Sovereignty of Parliament has two aspects . positive and negative. By positive aspect of sovereignty of Parliament we mean that Parliament has unlimited legislative authority. According to Blackstone, it has the power of making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of law, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime or criminal. It can regulate the succession to the throne. It can do everything that is not naturally impossible It is for this reason that some have talked of the omnipotence of Parliament De Lolme said, "It is a fundamental principle with English lawyers that Parliament can do everything but make a woman a man and a man a woman" Burleigh said, "England could never be ruined but by Parliament" "The power and jurisdiction of Parliament is no transcendant and absolute that it cannot be confined, either for causes or persons within any bounds."

Examples.

Examples can be given to show that Parliament can do

anything it pleases The Act of Settlement (1701) shows how Parliament could set aside the claims of dozens of rightful heirs to the throne. The Act of Union of 1707 and 1800 show that Parliament could do such great things as the creation of United Kingdom But the most important Act which illustrates the sovereignty of Parliament is the Septennial Act of 1716. A Parliament which was elected only for three years decided that it would represent the people for seven years. Prof. Dicey says that the importance of the Act lies in the fact that the Parliament which decided to represent the people for seven years instead of three, might decide to represent the people for ever

Parliament can pass not only public Acts, it can declare an infant or a minor of full age. It can naturalize an alien, and make him a subject-born It can bastard a child that by law is legitimate It can legitimate one who is illegitimate and born before marriage absolutely

Parliament can pass laws which affect certain persons and certain localities. It can pass private bills which refer to municipalities, railways or other corporations

The passing of the Acts of Indemnity shows that Parliament can legalize what was illegal at the time when it was done. Such Acts are usually passed after a period of emergency to absolve the executive of responsibility for the breach of laws

Negative Aspect of Sovereignty

By negative aspect of sovereignty of Parliament we mean that there is no other competing legislative authority in the country. It is wrong to say that the proclamations made by the King can in any way take away from the sovereignty of Parliament. These proclamations cannot create new laws They are subject to the authority of Parliament

Resolutions passed by one House or both Houses of Parliament do not have the force of law. The case of Stock Dale v Hansard shows that a resolution of Parliament has no legal authority

The sovereignty of Parliament is not affected by the will of the voters. Voters cannot enact rival legislation. They

act only through Parliament. They may elect the representatives, who will pass laws, but they cannot pass laws themselves.

Judge-made laws are subordinate to the laws of Parliament and do not take away from the sovereignty of Parliament. The interpretations given to the laws by the Judges are not in any way binding on the Parliament which can pass laws setting them aside

Alleged Limitations.

(i) Dicey points out three alleged limitations on the sovereignty of Parliament It is said that Parliament can pass only moral laws. But Dicey says that this is no limitation. Law is law whether it is moral or not It is law because it is enacted by the Parliament. Law is judged not by its contents, but by its form.

(ii) It is contended that Parliament cannot touch the prerogatives of the King But the history of England shows that Acts of Parliament have reduced the King's prerogatives to the present insignificant position The Bill of Rights is the case in point.

(iii) Some contend that a Parliament cannot modify or repeal the Acts passed by a previous Parliament. But the changes made in the Acts of Union of 1707 and 1800 by subsequent Parliaments prove that a new Parliament can change or set aside the laws of the previous Parliament The disestablishment of the Church of England in Ireland in 1869 proves that what was intended to remain for ever was set aside by the Parliament of 1869. The Irish Act of 1922 altogether repealed the Act of Union of 1800. The Act of Union of Scotland also was amended in 1853

Dicey remarks that "parliamentary sovereignty is, therefore, an undoubted legal fact."

Actual Limitations.

Of course, there are two actual limitations on the sovereignty of Parliament. Those are the External check and the Internal check The Internal check is that Parliament will do only that which its members desire. A Protestant Parliament

cannot pass laws giving privileges to the Catholics Parliament will not pass a law which creates all sweepers of England Peers It will not do so because of the ridicule to which it will be subjected by the people The External check comes from the opposition of the people to the law passed by the Parliament. The Parliament will not pass a law which is bound to be challenged by the people Both the checks can be explained in another way Parliament can pass a law that all the blue-eyed babies in England will be put to death but the members of Parliament must go mad before they pass such a law and the people must become stupid before they submit to it.

☞ Q. 11. What are the limitations on the Sovereignty of Parliament ?

Ans. According to Dicey, the British Parliament can legally do whatever it pleases. But in actual practice, there are certain limitations on the exercise of its sovereignty. Dicey has referred to two limitations : External and Internal The external limitation means that the Parliament will not do certain things because it knows that the people will resist such a measure The fear of revolt of the people may also act as a check on the sovereignty of the Parliament. The internal check arises from the nature of the sovereign power itself. Every sovereign is limited by its own character, ideas and environments Parliament is limited by the ideas of its members and the people outside. According to Stephen, "If a legislature decided that all blue-eyed babies should be murdered, the preservation of the blue-eyed babies would be illegal, but legislators must go mad before they could pass such a law.

In addition to the limitations pointed out by Prof Dicey, certain other limitations also have been pointed out by text-book writers. Those are the following.—

(1) Every student of the English Constitution knows that during the 50 years while the power of the Parliament has declined, that of the Cabinet has increased. Power has increased to such an extent that the British Cabinet is said to be the dictator. A critical examination of the working of the adminis-

trative machinery will show that it is the Cabinet that initiates and controls all legislation in Parliament. The Parliament has been reduced to the position of a registering machine. Thus, the Cabinet is a check on the Parliament. As a matter of fact, it decides as to what Parliament is to discuss and pass and when.

(2) In modern times, the electorate has come to exercise a tremendous influence on the working of the Parliament The latter dare not go against the wishes of the people The people are the political sovereign and the legal sovereign must go by the verdict of the political sovereign

(3) The press and public opinion also exercise a lot of influence over the working of the Parliament. The members of Parliament the cannot ignore the agitation that may be carried on by the press. It should not be forgotten that in these days of reading democracy, the news-papers which are printed, sold and read in millions every day, exercise a tremendous influence on the public opinion which cannot be ignored by Parliament. The members of Parliament know that if they flout the wishes of the people, that will be tantamount to committing political suicide Such members will not have any chance of re-election.

(4) Another limitation is International Law While interpreting the Statutes of Parliament, the Courts act on the presumption that Parliament did not intend to violate the principles of International Law It was pointed out in **West Rand Gold Mining Co v. The King,** that whatever had received the common consent of civilized nations, must be deemed to have received the assent of England also

(5) The Statute of Westminster, 1931, also puts a check on the sovereignty of Parliament This Act gave complete legislative independence to the Dominions. Thus, British Parliament cannot pass any law for those Dominions If a law is passed by a Dominion legislature, it is perfectly valid even if it is against some law of England As time passes on, the legislative sphere of the British Parliament is being circumscribed. It is to confine itself to making laws for England alone

(6) Judicial interpretation also puts a check on Parliament.

While making a law, Parliament is restrained by the consideration as to how that law is to be interpreted by the Courts The rules of interpretation are that the Courts lean against interference with personal liberty, taking away private property without compensation and depriving a subject of the right of access to the Courts

(7) Certain political, social, economic and religious associations influence the course of legislation in Parliament In recent times, a lot of emphasis is being put on legislation after consulatation Consequently, the Trade Unions and other associations are consulted before giving final shape to the legislation before Parliament

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☞Q 12. What factors have been responsible for the decline of the powers of Parliament or the House of Commons in England ?

Ans While in the 19th century, the writers waxed eloquent on the sovereignty of Parliament, that is not the case today The British Parliament does not occupy the same position in the British politics at present as it did during the last century. This new phenomenon is due to many factors:

(1) One important factor which has weakened the position of the House of Commons is the growth of a strong public opinion outside the Parliament Formerly, all the intelligent and ambitious members of the public used to sit in Parliament. A parliamentary career used to be the biggest attraction The result was that all the brilliance of the country was assembled in the House of Commons. No wonder, the British Parliament enjoyed a great prestige. Its discussions carried weight with the masses Hence, its authority was felt and appreciated.

But things have changed in modern times Besides the parliament, there are other more attractive jobs to be cared for. One would prefer to be the editor of the Times of London rather than to become an M P. The reason is that the former exercises a greater influence on the public and commands a greater prominence than a member of Parliament Since he would prefer to remain outside Parliament, the prestige of the

latter was bound to be lessened proportionately. Similarly a person like Prof. Laski exercised greater influence on the public than the members of Parliament. The same can be said about other great writers and public men who prefer to stay outside Parliament but who wield a tremendous amount of influence on the public Thus, the press and the radio exercise an enormous influence on the public and mould it in certain channels The result is that instead of the Parliament guiding the public, it is the public-opinion outside Parliament that forces the members of the Parliament to act in a particular way. No wonder, the power of the Parliament has declined on account of the existence of a strong public opinion. It is the force of this public opinion that was responsible for the introduction of conscription in England in 1939 and it is the same opinion which forced the Chamberlain government to declare war in 1939 although the latter was trying to delay it as long as he could

(2) The rigidity of the party-system in England has also weakened the Parliament The reason is that the members of Parliament do not enjoy the same liberty which their predecessors enjoyed in Parliament. Formerly, the members of Parliament used to get themselves elected because of their own influence and prestige But at present, only that person can hope to be returned to Parliament who has been adopted as a candidate by a particular political party. In certain cases, candidates can fight their elections only with the money from the party-funds The result is that the members become dependent upon their parties for their election and also continuity in Parliament A member does not vote against his party If he does so, he is liable to be turned out The result is that next time he will not be able to get himself elected. That means, in other words, the end of a parliamentary career In other words, to vote against one's party means committing political suicide That amount of courage will not be shown by very many. The result is that the members of the Parliament vote absolutely according to the instructions of the party-whips They must act according to the party mandate This strengthening of the parties has restricted the liberty of the members of Parliament. The latter must follow the policy as desired by the party. Since

the ministry belongs to the majority party and the latter must ditto whatever is decided by the Cabinet, the power goes into the hands of the Cabinet In other words, the strengthening of the hands of the Cabinet has weakened the Parliament. The former decides and the latter merely carries it out

(3) Another factor that has weakened the Parliament is the right of dissolution. In France, when a ministry is defeated in the Chamber of Deputies, it can do nothing but resign. The Prime Minister of France cannot go to the President and ask him to dissolve the Chamber of Deputies. The power of dissolution in France can be exercised by the President with the consent of the Senate. Thus, the Chamber of Deputies is strong enough to turn out any ministry

But that is not so in England. The convention is that when a ministry is defeated in the House of Commons, it need not resign. The Prime Minister has the right to approach the King and ask for a dissolution of the House of Commons. The convention has it that when the Prime Minister makes such request, it has to be conceded. The result is that the ministry gets an opportunity to try its chance with the electorate The power of dissolution possessed by the British Cabinet weakens the hands of members of Parliament The reason is the consequences of a dissolution discourage many members from voting against the ministry. Some of them might be successful on the margin and they may not like to risk a new election. Others may not like to waste huge sums of money on a new election. Still others may like to avoid the inconveniences of a general election. The result is that the members of the House of Commons do not possess the same zeal for turning out the ministry as the members of the Chamber of Deputies do in France Thus, the power of dissolution has weakened the hands of the Parliament in England.

(4) Growth of delegated legislation has also strengthened the hands of the Cabinet and weakened the control of Parliament over legislation. It is not denied that this new phenomenon is not inevitable. This is due to the fact that laws are becoming more and more technical and complicated. It is

not possible for ordinary members to grasp all the implications of modern legislation. Moreover, the number of the bills to be enacted is so large and the size of each bill so big that it is not possible for the House of Commons to discuss them thoroughly Consequently, a new device had to be found out to meet the new situation. What is done is that 'skeleton bills' are passed by the House of Commons and the ministers concerned are authorised to issue orders-in-council to supplement the provisions of the laws. That means that the power of legislation is transferred from the House of Commons into those of the Cabinet It is true that in certain cases it is provided that the orders-in-council must be placed before Parliament and the members are allowed to discuss them, but that is not always the case Under these circumstances, it is no wonder that power of the House of Commons has declined

The principle of collective responsibility strengthens the hands of the Cabinet and indirectly leaves less room for the members to overthrow a ministry Since each minister comes to the assistance of all others, the chances of a successful attack by the Opposition are lessened.

On the whole, it may be said that while in England the powers of the Cabinet are increasing, the House of Commons is going into the background. The latter is becoming a rubber-stamp merely to register the decisions which are arrived at by the Cabinet.

☞ Q. 13 Define rule of law and compare it with administrative law.

Ans Lecturing on the English Constitution, Prof. Dicey declared in the 1880's that rule of law was one of the chief characteristics of the English Constitution This means that in England, law is supreme It is above everybody. There is the rule of law and not the arbitrary will of any individual

According to Dicey, the rule of law embraces three "distinct, though kindred conceptions". In the first place, it implies that "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary

Courts" This means that no person can be punished in England unless he has been tried before a court and found guilty of some breach of some definite law of the country. Unless and until that is proved, no person can be detained and an application for a writ of Habeas Corpus can be moved to the High Court and the body of that person has to be produced in the Court. If the authority cannot prove that the person was arrested and detained according to some law of the country, he has to be released So long as a person is found to be innocent, he cannot be tyrannised An example of James I makes the meaning clear. When in 1603, the Londoners came out of the city to welcome their new King who was coming from Scotland, a pickpocket was caught red-handed and produced before the King for justice In order to impress upon his subjects the fact that he was a just king, James I ordered that man to be hanged without any trial But it is stated that this act left a very bad impression on the minds of the Englishmen who hated the hanging of a person without proper trial This principle protects the liberty of the Englishmen and leaves no place for the arbitrary will of the Government officials.

Secondly, the rule of law means that "no man is above law but that every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals What is law—legal right and legal obligation for me—must hold equality as such for all citizens" This means that "every official from the Prime Minister to a constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen" This emphasises the fact that every man is equal in the eyes of law Nobody can plead that he is not responsible for his actions. If the soldiers open fire on a crowd which is declared to be an unlawful assembly and kill some person while doing so, they are to be tried by the ordinary Courts. No favour is to be shown to them because of their status.

In the third place, rule of law means that "the general principles of the constitution are the result of judicial decisions determining the rights of private persons in particular cases

brought before the courts". This refers to the part played by the Judges in England in safeguarding the liberties of the Englishmen This emphasizes the importance of the case-law.

The essence of the rule of law is that every person is to be tried according to the ordinary law, by the ordinary courts There is so be no punishment without trial and conviction of the accused. But the critics point out to the violations of the rule of law in England. Under the Public Authorities Protection Act of 1893, proceedings against the Government officials must be started within six months and if those proceedings fail, the plaintiff is to be punished heavily so that there may be no frivolous prosecution of Government servants Although private institutions are responsible for the acts of their employees, the government is not The growth of administrative justice, also is against the spirit of the rule of law

The system of Administrative Law or Droit Administration exists in France. Under that system, the actions of the Government servants are divided into two parts viz , those done by them in their official capacity and those done by them in their private capacity as ordinary citizens So far as their private acts are concerned, the Government servants are to be tried by the ordinary courts But there are separate courts to try those cases in which the Government servants act in the official capacity. Moreover, there are two different sets of courts, viz., ordinary and administrative courts Lastly, while a codified law is administered by the ordinary courts, the administrative courts follow the precedents already established

There used to exist a lot of prejudice against administrative law. As a matter of fact, Prof Dicey discussed the subject with a view to show that while the rule of law safeguarded the liberties of the Englishmen, the system of administrative law which existed in France was its very negation But later on he corrected himself It is now realised that the system of administrative law has certain advantages It is pointed out that while under the rule of law, a Government servant is tried as an ordinary individual by an ordinary court, the things are different under administrative law. An administrative court consists of the head of the various departments and they can take into consideration the ackward

position in which the Government servants are placed at the time of the commission of the offence.

It might have been contended that since the Judges in the administrative courts belong to the different departments, they may show favours and the object of law may be defeated But all the writers are unanimously of opinion that in practice, the Judges have proved themselves to be upright persons

In one respect. the system of administrative law is better than the rule of law If an offence is committed by a Government servant in England even in the performance of his duties, his responsibility is only personal. The Government does not accept the responsibility for the actions of the public servants. The result is that the public servants are placed at a disadvantage Knowing their responsibility, they may act in a timid fashion while performing their duties. Moreover, the salary of a public-servant may be so small that the aggrieved party may not be able to realise the full amount of his loss. But in the case of France, the decretal amount can be realised from the state-treasury and thus both the parties are saved.

It might be said that since the Government servants are not responsible for their actions and the Government is to pay the fine whenever required, they might act irresponsibly. Their zeal may increase unnecessarily and they might infringe the liberties of the people. But since a departmental action is taken for every mistake made by a public servant, the danger is not real in actual practice.

It is to be noted that the distinction between rule of law and administrative law is not so definite as was pointed out by Prof Dicey in the 1880's. The change of times has its own effect on the legal system of a country No wonder, the Englishmen who were the critics of the French system, have adopted the system of administrative justice in England. The present tendency is to accept the merits and limitations of both the systems.

☞ Q 14. On what grounds has Dicey's conception of Rule of Law been criticised ?

Ans Prof Dicey praised the principle of the Rule of Law as it prevailed in England A critical examination of the three characteristics of the Rule of Law as pointed by Dicey shows that the Rule of Law is not to be found in England in the form in which he presented it There were many violations in the Rule of Law even in the time of Dicey and in recent times the tendency is to deviate from the strict rule of law.

The critics point out the following violations of the rule of law .—

(1) No proceeding, civil or criminal, is maintainable against the Crown in person. "As in the eyes of law no such wrong can be done, so in law, no right to redress can arise" "The Maxim applies to personal as well as to political wrongs" For a breach of contract or detention of property by the Crown, a remedy exists and that remedy is the petition of right. The procedure is regulated by the Petition of Right Act, 1860 According to this, the subject petitions the Home Secretary for leave to sue the Crown The King, on his advice, either gives or withholds his fiat to bring the action But it is not necessary that the permission will always be given In the case of Leaman v. The King, a solider who filed a petition for arrears of pay at the rate agreed upon when he was enlisted, his petition was refused (1920) 3 K B 663 In another case, a Sweddish Shipping Co, got a guarantee from the British legation at Stockholm in 1918 that in case a certain ship belonging to the company went to England, she would be allowed to return to Sweden and not to be detained in England The Ship came, but was not permitted to leave England. The Company was compelled to sell the ship and presented a petition claiming damages The petition was rejected. It was observed, "This was not a commerical contract. It was merely an expression of intention to act in a particular way in a certain event .... it is not competent for the Government to fetter its future executive actions which must necessarily be determined by the needs of the community when the question arises. It cannot by contract hamper its freedom of action in matters which concern the welfare of the state". (The Amphitrite v The King, (1921) 3 K. B. 500).

Apart from any special statutory provision, any contract of

service under the Crown may be terminated by the Crown without any notice. Even if there is any express term to the contrary, the Crown will not be bound by it. A servant of the Crown holds office only during the Royal pleasure.

If a subject of the Crown sues a Public authority, the public Authorities Protection Act, 1893, demands that he must do so within six months of the injury inflicted The official must be given an opportunity of tendering amends If the suit does not succeed, the official is entitled to costs at a higher scale than the ordinary defendant

According to the Crown Proceedings Act of 1947 which came into force from January 1948, any individual may now sue a Government Department in the same way as he is entitled to sue any other member of the community. This Act has abolished the immunity of the Crown in respect of torts committed by its servants In such a case, the remedy is not by a petition of right but a regular action in the ordinary courts It is to be noted that the petition of right is a matter of grace only

(2) There cannot be a judicial view of traffic control.

(3) The Home Secretary has the right to open and detain letters.

(4) Under the orders of the Home Secretary, the persons suspected of murder are kept under repeated remand on a minor charge.

(5) Lord Chamberlain censors the plays. His ban no court can remove

(6) The Governors-General of the Dominions enjoy the same immunities as are enjoyed by the Crown in England. They are not liable, officially or personally, for their official acts

(7) A Colonial Governor is immune from liability as regards public acts done by him within the limits of his commission. However, he is responsible for the acts done by him in excess of his authority

(8) Judges enjoy absolute immunity as regards acts done by them in their judicial capacity. A judge in vacation who unlawfully refuses to issue a writ of Habeas Corpus may be sued for a penalty of £ 500.

(9) Foreign States, their rulers and diplomatic Agents enjoy a large measure of immunity before English Courts. They are completely immune in case of personal misconduct. No legal process can be issued against trading vessels belonging to foreign states.

(10) Under the Trade Unions Act, 1906, no action lies against a Trade Union or against its members or officials, in respect of any tort committed by or on behalf of the Trade Union This immunity is not confined to acts done in connection with trade disputes It applies even to an action for libel. However, it is to be noted that the immunity of the Trade Unions is not available in cases under the provisions of the Trade Disputes and Trade Unions Act, 1927.

(11) The Home Secretary has been given absolute discretion to grant or deny to aliens certificates of naturalisation as British subjects He can revoke such certificates at his pleasure He has also the power to deport any undesirable alien. His discretion cannot be questioned in any Court of law.

(12) The Crown alone has the right to issue pass-ports to British subjects who want to travel in foreign countries. If the Crown refuses to issue a pass-port, its actions cannot be questioned in any Court of Law.

(13) Traditional privilege of the Peers of England to be tried only by Peers has been abolished by the Law Reform Act of 1947

(14) The Public Order Act, 1936, has endowed the Police with authority to administer a kind of preventive justice by means of regulating or prohibiting public meetings, processions, etc. and making, drilling and wearing of unauthorised uniforms illegal.

☞Q 15 Explain the relation between the Rule of Law and the Sovereignty of Parliament ?

Ans. According to Dicey, the sovereignty of Parliament and the supremacy of the law of the country may appear to be opposed to each other, but that appearance is delusive The fact is that the sovereignty of Parliament favours the supermacy of the law of the country

Prof Dicey has pointed out two characteristics or peculiarities of English Parliament which are responsible for this result The first characteristic is that the commands of Parliament can be uttered only through the combined action of the King, the House of Commons and the House of Lords These commands must take the shape of formal and deliberate legislation The will of the Parliament can be expressed only through an Act of Parliament The result is that this characteristic prevents those invasions upon the law of a country which a despotic King may have made by means of ordinance or decrees. As the Parliament speaks only through an Act of Parliament, that greatly increases the authority of the Judges A bill which has been passed by Parliament becomes subject to judicial interpretation The English Judges refuse to interpret law except by reference to the words of the law itself The English Judges do not take any notice of the resolutions of either Houseof Parliament They do not even consider the debates in Parliament. These things contribute to the authority of the Judges and the fixity of law

The second peculiar characteristic of the British Parliament is that it has never, except at periods of revolution, exercised direct executive power or appointed the officials of the executive government The servants of the state are the servants of the Crown. The Houses of Parliament do not directly appoint or dismiss the servants of the state They do not issue any order to any military officer, or a constable or a tax-collector Parliament has never been able to use the powers of the Government as a means of interfering with the regular course of law It was looked with disfavour and jealousy all exemptions of the officials from the ordinary liabilities of the citizen or from the jurisdiction of the ordinary Courts The Judges in England cannot be removed except by a resolution of both Houses of Parliament

It is to be noted that the supremacy of the law necessitates the exercise of Parliamentary sovereignty. Whenever the execu-

tive in England needs any exceptional powers, it applies to the Parliament It is the British Parliament which passed the Defence of the Realm Act, and the Emergency Powers Act After the ending of every emergency, the executive gets passed from the Parliament what is known as an Act of Indemnity. It is by means of such an Act that the actions of the executive which were illegal at the time when they were committed, become legal and valid. It is for this reason that Dicey remarked that "if the sovereignty of the Parliament gives the form, the supremacy of the law of the land determines the substance of our Constitutions"

CHAPTER II.

THE EXECUTIVE IN ENGLAND

Q 16. What is the distinction between the King and the Crown ?

Ans The difference between the King and the Crown is a fundamental one A study of the Constitutional History of England shows that the powers which were originally possessed and exercised by the King as a person are now being exercised by the Crown as an institution.

It is rightly said that "there were many subtle distinctions in vernacular or British Government but none more vital, as Gladstone once remarked, than the distinction between King and the Crown" The Crown is an abstract idea Sir Sidney Low calls it as a "convenient working hypothesis" The Crown is an institution. It never dies Thus the meaning of the saying, "The King is dead, long live the King" The King as a person may die, but the Crown as an institution never dies. According to Prof Munro, "The crown is an artificial or juristic person ; it is not incarnate, and it never dies" Again, "The Crown never dies. The powers and functions and prerogatives of the Crown are never suspended even for a single moment: They belong to a post, not to a person"

Q. 17. "The King can do no wrong." Discuss.

Ans. This maxim means that personally the English King

is not liable for any act done by him and cannot be sued in any court "As the King can do no wrong, it follows he cannot authorise wrong"

No order of the King is valid unless and until that has been countersigned by some minister or the other The minister who countersigns becomes responsible for that order. The liability is that of the minister and not that of the King Such a thing happens in England on account of the growth and establishment of the principle of ministerial responsibility. The following story about Charles II illustrates the point. A courtier Charles II once scribbled on the door of the royal bed-chamber the following verse

"Here lies a great and mighty king,

Whose promise none relies on ,

Who never said a foolish thing,

Nor ever did wise one"

Charles II replied that it was all very true because his sayings were his own, but his acts were the acts of his ministers

It was held in the case of Danby that ministers were responsible for whatever they did and they could not put forward the defence of the orders of the King to justify a wrongful or illegal act In 1678, Danby was impeached for having written a letter to the English Ambassador in France offering that certain things would be done in return for the payment of a large sum of money Danby pleaded that he had written that letter by the orders of the King of England and even produced that royal pardon for the alleged offence But those were not accepted as valid grounds for doing so

The maxim has also helped to remove the King from the arena of party politics and added to his dignity. Otherwise, the English monarchy would not have been so popular as it is today.

Strictly interpreted, this means that the king is not liable for whatever he does No action lies against the king. To take an impossible position, if the King of England shoots the

British Prime Minister through his head, he cannot be tried before any court. Till the passing of the Crown Proceedings Act in 1947, no action could be brought against the King for any wrong committed by him. The subjects has to petition the King for permission and that was not always given.

It was held in the case of **Feather v. The Queen,** that "the maxim applies to personal as well as to political wrongs."

Q. 17. "The British King is the fifth wheel of the coach" Discuss.

Ans. It is wrong to say that the British King is the fifth wheel of the coach. It is true that he has lost the previous powers and influence, but this does not mean that he has become absolutely useless. Even now, the King plays an important part in the administration of the country The student is referred to the question on the position of the King.

Q. 18. "The King is never an infant" Discuss.

Ans. In the eyes of law, the King is always capable of transacting the business of the State His age has nothing to do with his acts His minority does not affect his action. Royal grants and Statutes assented to by an infant King are as much valid as those assented to by a grownup King.

However, the British Parliament has made specific provisions regarding the minority of a King by the Regency Act of 1937 According to this Act, the royal functions are to be discharged by a Regent if the King is below the age of eighteen at the time of his accession to the throne, or is incapable by reason of infirmity of mind or body, or cannot perform his duties for some other reasons.

Q. 19 "The King is not bound by Statutes". Discuss.

Ans. This statement clearly indicates that the laws are made for the subjects and not for the King The King is not bound by the laws of the country unless there is an express or implied reference to the same in the Statute itself. The Civil List of the King is exempted from income-tax The driver of a War Office lorry cannot be punished for violating

the rule regarding the speed limit The above principle applies only in those cases where the property or the privileges of the Crown are affected. However, the King is supposed to be bound by those laws which aim at the public good. Examples are the laws for the preservation of public rights, suppression of public wrongs, advancement of learning, justice and religion, prevention of fraud, etc

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Q. 20 "The King is the fountain of justice" Discuss

Ans. This statement does not mean that the King is the author or the originator of justice He is the distributor of justice. The King is not the spring of justice He is the reservoir from which justice flows to the individual. The King alone has the right of erecting Courts of Justice and all judicial proceedings are taken in the name of the King. But this does not mean that he can interfere with the day to day administration of justice by the courts and the judges "the King's command cannot disturb or delay common justice."

The King enjoys the prerogative of pardon He can grant this pardon before the conviction or after the conviction of the accused. However, he cannot pardon a libel or slander, or a public nuisance.

Q 21. What is the position of the King in the English Constitution ?

Ans Legally speaking, the English King to-day has the same powers as the Norman Kings had. Most of the things are done in his name. Technically, the whole of the administration of England is carried on in the name of the King, but the growth of the cabinet system in England has in actual practice transferred all the powers into the hands of the ministers who are elected by the people and are responsible to the people through Parliament Since England has a Parliamentary Government, all powers must be in the hands of those who are responsible for them. Since the King cannot be made responsible to anybody, he cannot, under a Parliamentary Government, exercise any authority. No wonder, the English King has been described as a rubber stamp or figure-head or a signing machine.

It is true that in a Parliamentary form of Government, the English King cannot exercise any discretionary power without consulting his ministers. But this does not mean that the English King has absolutely no influence on the administration of the country. Experience has shown that the King has positive influence if not control over the administration Bagehot says that the English King has three kinds of powers :

1. In the first place, the King has *the right to be consulted* Whenever there is any important matter under discussion before the Cabinet, the advice of the King is usually sought. That advice carries a great weight with the Cabinet. The reason is not far to seek While the ministers keep on changing very often, the King goes on The result is that the practical experience and the knowledge of the King regarding administration is much greater than that of any minister. Thus, Queen Victoria ruled from 1837 to 1901. On account of her long reign, she could be expected to know more about administration than other ministers Her 64 years' of rule helped her to know more about the intricacies of various problems of the country and also their historical background than any minister. No wonder, great weight was attached to her opinions Moreover, the King belongs to no party His advice is expected to be impartial Sitting in the palace, the King studies the situation of the country and is expected to speak out his mind without any fear of his being turned out It is clear that the right to advise has great potentialities and hence through this right, the English King does exercise a lot of influence on the administration of the country.

2 Secondly, the English King has the right to warn the ministers If he feels that a particular thing which is being done or is going to be done by the ministers is not in the interests of the country, he can warn the ministers who have to listen to the warning and as far as possible act accordingly. Thus, in 1931 when the great economic crisis occurred, the English King asked the Labour Government to set up a National Government It is well-known that Ramsay Macdonald agreed to form a National Government without even consulting the other members of his party It is also to be noted that although the number of his followers was very small as compared with

those of Baldwin, Ramsay Macdonald continued to be Prime Minister from 1931 to 1935

3 In the third place, the English King has the power to encourage This means that if the King approves of the policy followed by his ministers, he encourages them to go ahead with the same This encouragement must have a healthy influence on the work of ministers

In addition to the above powers, the English King influences the foreign policy of the country The King can have direct contacts with the Government of the other countries The personal element is very important Thus, it was the visit of Edward VII to France in 1903 that brought England and France together in 1904 and ultimately made England fight with France against Germany in 1914 Again, it was the visit of George VI in early 1939 that brought England and France together in World War II It was the visit of the English King to Canada and U S A in July 1939 that brought the countries together and helped U S A and Canada to enter the war on the side of England

Thus, it is clear that although the English King is a constitutional ruler, he can and does exercise a lot of influence on the government of the country In spite of democracy in England, the English King is immensely popular and this helps him to exercise the influence which he does.

☞ Q. 22. Give a comparison of the position of the King of England with the Presidents of France and America and Prime Minister of England ?

Ans. There is a fundamental difference between the position of the American President on the one hand and the King of England and the French President on the other. The reason is that American President is the head of a Presidential system of Government and the French President and the King of England are the heads of Parliamentary forms of Government Under a Presidential system, all the powers of the executive are in the hands of the head of the Government. It is for this reason that the American President possesses real and substantial powers Thus, the American President is the director of the whole of the

administrative machinery of the government He is the leader of the nation. The people look up to him for guidance and direction of the affairs of the State. No wonder, the American President is the head of the Army, Navy and Air Force It is he who decides the size and strength of the three armed forces. It is his duty to look to the smooth and efficient working of the various departments of the government. He has full discretion in the matter of the appointment of his Ministers He can appoint anybody he pleases. They are merely his assistants They cannot force their opinion on him He can overrule them on any point. He need not even consult them if he so pleases In short, it is he who is supreme in the matter of the direction of the work of his various departments The President makes all appointments It is true that those appointments have to be ratified by the Senate but this can be managed by a clever President by a judicious use of the power of Senatorial Courtesy The President also appoints the Judges of the Supreme Court although he cannot dismiss them after once appointing them The President can declare war, but before he can do that, he must get the approval of the both Houses of the Congress. The President can make treaties, but those must be ratified by the Senate. Clever Presidents have been able to avoid the sanction of the Senate by entering into agreements with other countries by not giving the agreement in the shape of treaties. The President is the Director of the Foreign Policy of the country. He appoints ambassadors in foreign countries and directs their activities. Sometimes, Presidents have appointed special representatives in certain countries and sometimes ambassadors at large. Foreign ambassadors are addressed to him.

The American President has the power to influence the legislation in the country. He is given the power to send messages to the Congress This the President does at the beginning of every session In these messages, the President puts forward his own programme and also gives directions to the Congress to pass legislation of a particular type The messages influence tremendously the legislation proposed by the various committees before the Congress. The Congress dare not ignore the messages of the President. When the President addresses a message to the Congress, the same is broadcast to the nation. The message

is re-produced verbatim in every newspaper. Editorials are written on it The message is discussed in discussion-groups The result of all this is that the Congress cannot afford to ignore the message sent by the President. This gives substantial control over legislation to the President Moreover, the President has got the right of vetoing the bills passed by the Congress But the Congress can get the bill passed over the veto of the President by passing the same by a two-thirds majority. The President has also the power to exercise what is known as the pocket veto The result of all this is that the American President exercises real and substantial power over the Administration of the country. As a matter of fact, he is the pivot of the administrative machinery of the country

But that is not the case with the French President or the King of England They are the heads of Parliamentary form of Government In a Parliamentary system of Government, there are two types of executive · nominal and real The King of England and the President of France are the nominal executive and the Cabinets in these two countries are the real executive. The result is that while all the powers in England and France are exercised by the Cabinets in these countries, the King of England and the President of France are merely titular heads. They may have some influence but they do not have any powers over the administration of their countries Thus, the President has many powers but he has to exercise them only according to what the ministers ask him to do Actually, he has no powers of control. As the Ministries in France change very frequently, this gives the President a chance to influence politics to some extent. Moreover, as there are very many parties in France and no one party has a majority in the Legislature, the President has a lot of discretion in the matter of selecting the Prime Minister This is different from the King of England who has to call the leader of the Opposition to form the ministry when the party in power has been overthrown. The French President also exercises some influence over the foreign affairs of the country Thus, the French President went to London in 1904 and that brought about an alliance between England and France. Similarly, the visit of the French President in 1939 to England brought the two countries together. The personal correspondence of the

President with the heads of other countries can also produce some useful results.

What is true of the French President is equally true of the English King. In all that he does, he has to act according to the advice of ministers. The King of England is merely a figure-head. He has no substantial power of control over the administration of the country. In all that he does, he is guided by the advice of his ministers. The King of England has absolutely no discretion His speech from the throne is written by the Prime Minister and he has merely to read it out. He has no discretion in the matter of appointment of ministers. It is well-known that although Queen Victoria did not like Gladstone, the latter had to be summoned by her to form the ministry four times. It is said that once upon a time Queen Victoria and Gladstone quarrelled and she reminded the Prime Minister of England that she was the Queen of England. Gladstone retorted that he was "the voice of England"

But this does not mean that the King of England has no influence on the affairs of England. Bagehot said that the King of England had three powers viz., the right to be consulted, the right to encourage and the right to warn and a wise king need not have any other. The convention is that before any major decision is taken by the Cabinet, some minister goes to the King and seeks his advice on the matter. This advice has great effect on the decisions of the Cabinet. The reason is that while the ministers keep on changing, the King goes on from year to year. Consequently, his store of experience is much more than that of any minister and more value has to be attached to his advice. Queen Victoria ruled for more than 60 years and consequently her experience of the state affairs was bound to be more than that of any minister. Moreover, the King does not belong to any party. He has no axe to grind. He is above party politics Under the circumstances, his advice is bound to carry weight. Similarly, the King has right to warn the ministers if he thinks that their policy is not in the interests of the country. Great weight is given to such a warning. Likewise, the King encourages his ministers by telling them that he approved of their policy The King of England has also a lot of influence on the foreign policy of his country. It is the visit

of Edward VII to France in 1903 that brought about the alliance between England and France in 1904 Similarly, the visit of George VI to Canada and U S. A in 1939 brought the two countries into the World War II on the side of Great Britain Similarly, the correspondence of the King of England with the heads of other countries can produce very great results. Thus, although the King of England has not any powers which he can exercise in his discretion, he certainly exercises a lot of influence on the affairs of the State

As regards the Prime Minister of England, he is the leader of the House of Commons and his party He makes a choice of his colleagues of the Cabinet He is the first among equals. The other ministers are not his servants They differ from him only in degree and not in kind Unlike the ministers of the President of U S A who are merely the nominees of the President and not the representatives of the people in the legislature, the ministers in England are members of Parliament and consequently have the backing of the people Ordinarily, the Prime Minister can distribute the various port-folios among his colleagues according to his judgment But in certain cases, he has to submit to the desire of any strong colleague of his and give a particular port-folio to him In 1929, Macdonald had to give the port-folio of foreign affairs to Henderson.

The Prime Minister usually is not in charge of any department His duty is to co-ordinate the work of all the various departments. He has to see that the machinery of the State moves smoothly in all its departments. Although he is not in charge of any department, he comes to the assistance of any minister who is in difficulty He may not be in charge of foreign affairs, but it is he who makes authoritative pronouncements on foreign policies It is well-known that Churchill used to place before the House of Commons his review of the war situation. The Prime Minister also makes the time-table of the Parliament He decides as to when the Parliament is to meet and also as to how long it is to meet and also whether the session is to be open or secret. He decides as to how much time is to be given to the discussion of official bills or to private bills In short, the Prime Minister is the Director of the administrative machinery of the country His actual place in the politics of the country depends

upon his personality It is a matter of personal equation. He is evidently stronger than the Prime Minister of France The reason is that as the leader of a single party, he is always sure of the support of his party members But in France every ministry is formed by a combination of many parties or groups and consequently the Prime Minister cannot depend upon their support and any group may withdraw the support at any time and thereby bring about the fall of the Prime Minister.

If we compare the Prime Minister of England with the President of U S A, there is one particular point to be noted While both the personalities have powers of supervision, direction and control over the affairs of their countries, there are certain differences. The American President can get anything done from his ministers who are merely his assistants. He need not humour them. The latter must carry out his orders or get out But that is not the case with the Prime Minister of England The other ministers of England are also the representatives of the people and, therefore, are not non-entities. The Prime Minister has to deal with his colleagues cautiously It is impolitic on his part to dictate He has to carry his colleagues with him. Usually, the ministers accept his guidance or decision. But the Prime Minister also cannot arbitrarily ignore their advice. Another point of difference is that on account of the theory of separation of powers in the American Constitution, the President is not in a position to get anything done at once from the Congress. To some extent, the discretion rests with the Congress. The Congress may not oblige him to the extent to which he wants to be obliged. This may handicap the President in his work But on account of the Parliamentary system of Government in England, the Prime Minister is not only the leader of the House of Commons but also the head of the ministry The result is that whatever powers or laws the Prime Minister wants, he can get them from the House of Commons on account of the majority of his party in the House of Commons

It is clear from above that the President of France and the King of England stand approximately on the same footing. Likewise, the President of America and the Prime Minister of England possess substantial powers, although the form of Government in two countries makes some difference in their

powers Sir Henry Maine had rightly said that while the Kings of England reigned but did not govern, the President of U S A. governed but did not reign, the French President neither reigned nor governed

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Q 23. "The English King reigns but does not rule". Discuss.

Ans This statement emphasizes the fact that while the English King continues to reign as long as he lives, he has no actual control over the administration of the country He is merely a figure-head He has no substantial powers For the actual position of the King, please refer to Questions 21 and 22 above

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Q 24 "If the Crown is no longer the motive power of the ship of the State, it is the spur upon which the sail is bent, and as such it is not only a useful but an essential part of the vessel" Discuss. (Lowell)

Ans Please refer to Questions 21 and 22.

Q 25 "It would be wrong to underestimate the influence of the monarch in British politics" Discuss

Ans Please refer to Questions 21 and 22

Q 26. Why kingship is not abolished in England ?

Ans A question is sometimes asked as to why kingship is not abolished in England As a matter of fact, the republican sentiment became so very strong during the reign of Queen Victoria that there was a move to abolish the monarchy But at present, there is absolutely no move to abolish kingship There are many reasons why kingship is being maintained in England

1 The king is immensely popular It is his popularity that enables him to continue It has been rightly pointed at there are more pictures about the Royal Family in

the newspapers of the poor people those that of the aristocracy. All the members of the Royal Family are always on the look out to find out ways and means by which they can render service to the poor people. It is not un-common for the Queen to start a movement for collecting warm clothes in large quantities to be distributed among the poor

2 According to Jenks, "The King supplies the vital element of personal interest in the proceedings of the Government. It is far easier for the average man to realise a person than an institution. The vast mass of the people is really interested in the King as a person, as proved by the crowds that collect in the streets whenever there is a chance of seeing him He, therefore, supplies the personal and the picturesque element which catches the popular imagination for more readily than constitutional arrangements which cannot be heard or seen."

3 It is pointed out that the present position of the King is not incompatible with the Parliamentary form of Government in the country Experience shows that it is not possible to work a Parliamentary system of administration without a titular head In the case of France, we have a President who is the nominal head The same is the case with the Dominions where a Parliamentary system exists. If Parliamentary system is to continue in England, the English do not gain anything by abolishing kingship They shall have to provide for another nominal head like the present King of England. Moreover, the election of the new head will create many complications which are not worthwhile As a matter of fact, the English are bound to lose heavily

4 Kingship is indispensable for the British Empire He is symbol of imperial unity and the "golden link of the Empire". It is only the King who holds together the Dominions who are independent for all practical purposes It is pointed out that the abolition of monarchy will mean the dissolution of the British Empire General Smuts rightly pointed out that "you cannot make a republic of the British Common-wealth of Nations" It is rightly pointed out that the creation of a republic in England will create many difficulties, which may be impossible to surmount. The Dominions may refuse to render

homage to the elected President of England They may demand a share in the election of the President That will involve a lot of expenditure and inconvenience That might create friction also. It has rightly been said that when **George V signed the Statute of WestMinster** in 1931, he made himself indispensable to the British Commonwealth of Nations.

5 It has already been pointed out that the King is not a figure-head in British politics Although he is above party-politics, he plays a very useful role which is recognised by all impartial observers It has already been pointed out that the King has the right to advise the ministers and his advice goes a long way in determining the ultimate policy of the ministry. It is partly due to his vast experience and partly to his impartiality He has also the right to warn and encourage his ministers He has rendered great services as a mediator in British politics Queen Victoria successfully mediated in 1867 and 1887 The same thing was done by George V in 1914 with regard to the Irish Home Rule controversy In 1931 the National Government was formed on the suggestion of George V Prince Albert averted a clash between England and U S A by softening down the tone of the British Despatch on the Trent Affair Edward VII was largely responsible for the Entente Cordiale between England and France in 1904 Many examples can be given to show the part played by the King in foreign affairs

6 The King has become the chief of the social edifice He exercises a tremendous influence in matters of religion, morality, charity, art and science

7 Kingship is not expensive. The Englishmen shall have to pay as much to an elected President Had it been otherwise, the shrewd Scotchmen must have demanded the abolition of monarchy.

No wonder, the English monarchy enjoys great popularity and is considered to be a part and parcel of the English administrative system. The King had adjusted himself so nicely to the new state of affairs that there is no talk to abolish monarchy in England

Q 27. What are the characteristics of the English Cabinet system?

Ans The English Cabinet system has certain salient features of its own In the first place, the King must be excluded from the Cabinet. The King must not attend and preside over the meetings of the Cabinet. But this does not imply that the King does not exercise any influence at all over the British politics Prof Laski says : "The fact that royal influence is both constant and pervasive, is beyond discussion The mere rumour that the King Edward VIII was dissatisfied with Mr. Baldwin's policy for the distressed areas made the policy a theme of intense, and even angry national discussion throughout the brief period of his reign The determination of George V, as he told Esher, to take a special interest in imperial concerns is hardly likely to be unconnected with the emphasis they received from his successive governments An energetic monarch, skilfully advised, can still play a considerable part in shaping the emphasis of policy"

2. The second characteristic is ministerial responsibility The ministers are responsible to the King, although this responsibility is merely formal. They are responsible to the House of Commons and they are also responsible to one another Out of these, the most important is the responsibility of the ministers to the House of Commons Every Minister is responsible to the House of Commons for whatever happens in his department Ministers can be censured or a vote of no-confidence can be passed against them Legislation introduced by the ministry can be rejected The ministers remain in power so long as they enjoy the confidence of the House of Commons When they lose that, they must either resign or the Prime Minister should advise the King to dissolve the Parliament When so requested, the King must do the needful

3 The responsibility of the ministers is collective Lord Morley says. "As a general rule, every important piece of departmental policy is taken to commit the entire Cabinet, and its members stand or fall together The Chancellor of the Exchequer may be driven from office, by a bad despatch from the Foreign Office, and an excellent Home Secretary may suffer for the blunders of a stupid Minister of

War. The Cabinet is a unit a unit as regards the sovereign, and a unit as regards the Legislature Its views are laid before the sovereign and before Parliament, as if they were the views of one man It gives its advice as a *single whole, both in the* royal closet, and in the hereditary or the representative chamber .. The first mark of the Cabinet, as that institution is now understood, is united and indivisible responsibility." According to Lord Salisbury, "For all that passes in the Cabinet, each member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues" No minister should make any speech which commits the Cabinet to a certain policy without consulting the Prime Minister If he does so, he must resign The Cabinet is a corporate unit, standing or falling together as an indivisible whole. Either all the members swim through or all drown The members of the Cabinet may differ from one another while taking part in a Cabinet-meeting But once a decision has been arrived at, all must accept the same as their own. Lord Melbourne gave the following advice to his colleagues in the Cabinet. "It does not in the least matter what we say, but we must all say the same thing"

4 Another characteristic is homogeneity and unity in the Cabinet With a very few exceptions, the members of the Cabinet in England belong to one party Coalition Cabinets have been formed on the occasion of war or national crisis to present a united front All the ministers must belong to the same party At least, they must not oppose one another openly. An exception was made in 1932 when the liberal members of the National Government were allowed to differ from other ministers on the question of protection and even vote against the ministry in Parliament

5. Another characteristic is the close correspondence between the Cabinet and the parliamentary majority for the time being This is due to the fact that the leader of the party which has a majority in Parliament, is asked to form the Cabinet Moreover, every minister of the Crown must be a member of one House or the other. If he is not a member, he has either to be created a peer or he has to get himself returned to Parliament within 6 months of his appointment.

6. Another characteristic is secrecy. This is necessary in the interests of solidarity of the ministry The world outside should not know as to what passes in the inner meetings of the Cabinet Moreover, at the time of becoming ministers, the members have to take an oath of secrecy and consequently, they cannot divulge out the secrets But in spite of the precautions taken, secrets do leak out sometimes and they are published in the press It is to be noted that in 1931, the Labour Ministers and the Ex-Ministers competed with one another in telling the world as to what happened in the Cabinet on the question of retrenchment proposals.

7 Another characteristic is the leadership of the Prime Minister He is the symbol of unity in the Government The Cabinet is formed, presided over, guided and controlled by the Prime Minister According to Lord Morley, the Prime Minister is the keystone of the Cabinet arch. "Although in the Cabinet all its members stand on an equal footing, speak with equal voice, and, on the rare occasions when a division is taken are counted on the fraternal principle of one man, one vote, yet the head of the Cabinet is Prime Minister who occupies a position, which so long as it lasts, is one of the exceptional and peculiar authority" (Morley).

☞ Q. 28 Discuss the position and functions of the British Cabinet.

Ans The Cabinet occupies the most important position in the administrative system of the country and it is no exaggeration to call it the pivot of the whole administrative machinery As such, the Cabinet performs many functions.

It is the Cabinet that determines the policy of the Government Unlike the American President who has to depend upon the good-will of the Congress in passing the legislation required by the executive, the British Cabinet can formulate the policy it pleases and also carry out the same The reason is that the British Cabinet possesses a majority in the Parliament and consequently, whatever bills it places before the Parliament are bound to be passed Thus, the Cabinet is always sure to get all the powers it requires for carrying into effect the policy

it has decided upon. The combination of the executive and the legislature in the Parliamentary system of England, makes the British Cabinet very strong

The members of the Cabinet are in charge of most of the important departments of the Government and whatever policy is formulated and whatever laws are passed, are bound to be enforced in the same spirit in which they are enacted. This co-ordination strengthens the hands of the Cabinet.

The Cabinet decides as to when the Parliament is to meet, what is to be its time-table, what laws are to be passed, how much time is to be devoted to the work of the Government and how much time is to be reserved for private bills It also decides its attitude towards the private bills

The Report of the Machinery of Government Committee (1918) referred to the following functions of the Cabinet :—

(1) The final determination of the policy to be submitted to Parliament

(2) The supreme control of the national executive in accordance with the policy prescribed by Parliament.

(3) The continuous co-ordination and delimitation of the authorities of several departments of state

According to Lord Oxford and Asquith, the following things are not discussed in the Cabinet —

(*i*) the exercise of the prerogative of mercy ,
(*ii*) the personnel of the Cabinet, and
(*iii*) the making of appointments

It is to be noted that the Budget proposals are not discussed in the Cabinet. That is essentially the job of the Chancellor of the Exchequer who does this work in consultation with the Prime Minister The reason why such a procedure is adopted is that it is necessary to keep the new taxation proposals a guarded secret

In order to facilitate the quick disposal of controversial matters, they are referred to certain Committees or Sub-Committees of the Cabinet

The growth of delegated legislation has added to the powers of the Cabinet The Parliament passes merely skeletons

bills and the ministers concerned are authorised to issue Orders-in-Council The result is that the various departments have come to possess and exercise a very large measure of legislative powers which are independent of control of Parliament.

Likewise, the growth of administrative justice in England has made the ministers-in-charge of various departments, the highest or final court of appeal in certain matters.

In short, the Cabinet enjoys legislative, executive and judicial functions.

According to Sir. J. A R Marriot, "Taking together the Cabinet and the Prime Minister are the pivot round with the whole political machine revolves, yet neither is known to the law." It is an account of its powers and functions that the British Cabinet is called "Steering Wheel of the ship of the State," "the key-stone of the political arch," "the pivot of the English Constitution," and "most important single peace of mechanism in the structure of the British Government."

Q 29 "The Cabinet is the most important single peace of mechanism in the structure of the British Government" Discuss

Ans Please refer to the functions of the Cabinet and its position as given in question 28.

☞ **Q 30 "The Cabinet is the steering wheel of the ship of the State." Discss**

Ans. In this statement, Ramsay Muir compares the state to a ship and the Cabinet to the steering wheel of the ship As the steering wheel is important in a ship, so is the Cabinet in England It is the steering wheel which guides and controls the ship and likewise the British Cabinet also directs the destinies of the British State For powers and functions of the Cabinet, please refer to question 28.

☞ **Q. 31. "The Cabinet is the pivot of the Constitution." Discuss**

Ans. This statement of Sir J A R Marriot refers to the central position occupied by the British Cabinet It controls both the executive and the legislature. For details please refer to Question 28.

Q. 32. "The English Cabinet has been described as the hyphen that joins, the buckle that fastens, the executive and the legislative departments." Explain.

Ans This statement of Bagehot refers to the Parliamentary system of Government in England It points out how the executive and the legislature are linked up by the Cabinet The reason is that the party which has a mojority in Parliament is called upon to form the ministry Thus, the ministers belong to the majority party in Parliament and are also members of Parliament. They are also responsible to Parliament for whatever takes place in their departments. They can be interrogated by members of Parliament, a vote of no confidence can be passed against them. Bills introduced by them can be thrown out. The salaries of the ministers can be cut down to a nominal sum. All this indicates to the intimate connection between the Cabinet and Parliament.

☞ **Q. 33 What do you understand by the ministerial responsibility in England ?**

Ans. According to Prof Dicey, ministerial responsibility in England means two utterly different things It means the responsibility of ministers of Parliament or the liability of ministers to lose their offices if they cannot retain the confidence of the House of Commons It also means the legal responsibility of every minister for every act of the Crown in which he takes part.

It is true that there is no specific provision of English law that every act of the King must always be done through ministers, and all orders given by the Crown must be countersigned by a minister, but practically that is the case. The act of the Crown has legal effect only if it is done with the assent of or through some minister or ministers who will be held responsible for it.

The royal will is expressed in three different ways, viz. by order-in-Council, by order, comission or warrent under the sign-manual, and by proclamations, writs, patents, letters or other documents under the Great Seal An order-in-Council is made by the King "By and with the advice of the Privy Council" Those persons who are present at the meeting of the Council at

which the order is made, are responsible for what is done there. The sign-manual warrant, or other document to which the sign-manual is affixed, generally bears the counter-signature of one responsible minister or of more than one It is usually authenticated by a seal of Secretary of State The Great Seal is affixed to a document on the responsibility of the Chancellor who becomes responsible. The result is that sometimes one and sometimes more than one ministers become responsible for every act of the King That act may be the making of a grant, the giving of an order, or the signing of a treaty The minister cannot get rid of his liability by pleading that he acted in obedience to royal order.

According to Dicey, "it is now well-established law that the Crown can act only through ministers and according to certain prescribed forms, which absolutely require the co-operation of some minister, such as a Secretary of State, or the Lord Chancellor, who thereby becomes not only morally but legally responsible for the legality of the act in which he takes part."

According to Prof. Munro, there are three aspects of the ministerial responsibility in England. Those are responsibility to the King; responsibility to one another and responsibility to the House of Commons.

As regard the responsibility of the minister to the King, it is merely technical. The King cannot dismiss a minister so long as the ministry to which it belongs possesses a majority in the House of Commons There is also a measure of responsibility It is the duty of the ministers to keep the King informed of what they do Queen Victoria once told Palmerston that "she expects to be kept informed of what passes between him and the foreign ministers before important decisions are taken based on that intercourse" This principle is fully recognised even to-day.

The ministers are also responsible to one another This is necessary to maintain the solidarity of the ministry The ministers have to follow the policy which has been decided upon in a joint meeting of the ministers The ministers come to the help of one another when any one of them is attacked in the House of Commons

The ministers are also responsible to the House of Com-

mons. This means that the ministers can continue in office so long as they enjoy the confidence of the House of Commons. As soon as that confidence is lost, the ministers can follow any of the two alternatives They can resign. Or, the Prime Minister can ask the King to dissolve the Parliament on the ground that the sitting House of Commons has lost the confidence of the people When the King is requested to do so, he must dissolve the House of Commons. If the ministry in power gets a majority in the new elections, it continues If it does not, it resigns without facing the new House of Commons Ministerial responsibility also means that the ministers can be criticised by the members of the House of Commons for whatever has been done in their departments Every minister is responsible to the House of Commons for whatever takes place in his department

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☞ Q. 34 Compare and contrast the ministerial system of France with that of England

Ans. Although both France and England have a Parliamentary form of government, there are certain differences in the ministerial systems of the two countries.

1 In England, there is the principle of collective responsibility of the ministers If one minister is defeated, all the ministers resign They stand and fall together But that is not the case in France. Although the Constitution lays down that the ministers will be responsible both individually and collectively, experience shows that the term "collectively" seems to have been ignored altogether in actual practice Unlike England where all the ministers come to the help of a minister when the latter is attacked in Parliament, a French minister is left to face alone the criticism of the Opposition It is evident that he will not be strong enough to stand the attack. Consequently, the ministry will have to resign. No wonder, the ministries change so often in France

2 In England, the party which has a majority in the House of Commons forms the ministry and continues in office so long as it can manage to maintain that majority. The ministers are responsible only to the House of Commons An adverse vote in the House of Lords does not affect the future of the ministry. But that is not so in France. In that country, the ministers

are responsible to both the Chambers. It is pointed out that the intention of the fathers of the Constitution was to use the singular and wrongly the plural was used It was intended that the ministers should be responsible only to one Chamber. But the experience of more than 75 years is against such a supposition. The fact is that the ministries resigned in France on many occasions even when they were defeated in the Senate It is this responsibility to both the Chambers that resulted in the instability of the ministries in France

3 In England, when a ministry has been defeated, it has two alternatives before it. It may resign forthwith or the Prime Minister may ask the King to dissolve the House of Commons. The convention is that when the Prime Minister asks the King to dissolve the House of Commons, the latter must grant 'his wish If the ministerial party manages to secure a majority in the new general elections, the old ministry goes on, otherwise it resigns It is clear that a defeated ministry in England has the right to dissolution. It is pointed out that it is this right of dissolution which strengthens the hands of the British ministry and weakens the independence of the House of Commons The members of Parliament know fully well that even if they defeat the ministry, the latter is not bound to resign. On the other hand, it may demand a dissolution. The result will be that the members shall have to fight new elections That is not only inconvenient but also an expensive affair. Moreover, some of the members who were elected on the margin may not like to risk a new election. It is these factors that discourage the members of Parliament from passing a vote of no confidence against the ministry.

But in the case of France, it is the French President who can dissolve the Chamber of Deputies with the consent of the Senate. That is, the power of dissolution is to be used on the initiative of the President and not of the ministers The result is that when the ministers are going to be turned out by the Chamber of Deputies they have no power to hit back. They can merely beg of the Deputies not to turn them out. But these appeals do not count and the ministers can be turned out when the Chambers in France desire the same Their existence depends entirely on the sweet-will of the members of the two Chambers.

4. In England, there are two major parties and the result is that at any time, one party has a majority in the House of Commons and forms a ministry which is homogeneous. Since all the members of the ministry belong to one party, it is very easy for them to pull on. They have a common programme They have also solidarity among themselves. Their ministries last for years. The fall of a ministry is a rare phenomenon.

But things are different in France There are too many parties or groups in France The result is that no one party has a majority It is for this reason that every ministry in France is a coalition. Such a ministry can have no homogeneity or solidarity. Its programme is not certain The programmes of the parties which have joined hands to form the ministry, have to be combined together Under these circumstances, the working of the Parliamentary machinery becomes a difficult task There are always differences among the ministers who come from different parties The result is that they do not pull on harmoniously There is enough scope for mutual bickerings This fact ultimately leads to the fall of the ministry.

5. In England, the position of the Prime Minister is very strong. The reason is that he is the undisputed leader of the party which has a majority in the House of Commons The party-discipline has become so rigid that all the member of his party must do what he directs them to do. This fact strengthens his hands

But in the case of France, each coalition ministry is an inconvenient combination of many parties. Each of those parties maintains its separate entity Even when they have joined hands in the formation of ministry, no trust can be placed on their allegiance. This fact makes the position of the French Prime Minister a very weak one. He cannot dictate to his colleagues. He is always busy to keep them in good humour so that they may not leave him Under these circumstances, the Prime Minister of France sits on a shaky throne. Any wind may overthrow them

6. In England, when one ministry resigns and a new one comes to power, all the ministers of the second ministry are new ones. The reason is that the new party will take all the ministers from its own ranks. But that is not so in France. In that

country, eight or nine parties might have combined to form a ministry. When that ministry falls, six or seven of them may join hands with the new ministry. The result is that the new ministry will also have many members of the old ministry. Thus, the personnel of the second ministry will not be absolutely a new one. Sometimes, the only difference between the old and new ministry may be that the Prime Minister becomes the Foreign Minister and vice versa. The result is that ministerial changes in France have been compared to the reshuffling of cards. This fact also explains as to why there are so frequent changes in France. When in England the ministry is defeated, a wholly new one comes to power. It is this fact that makes the members of the party to do all in their hands to keep the ministry in power. But in the case of France, a change in the ministry may be in the interests of a group and consequently a ministerial crisis may be precipitated in France with a view to make a better bargain. This explains as to why there are so frequent ministerial changes in France.

Q. 35. How does the ministry control the Parliament?

Ans. England has a Parliamentary form of government and as such the ministers are responsible to the Parliament for whatever they do or whatever happens in their departments. They remain in office so long as they enjoy the confidence of the House of Commons. But this does not mean that the British Ministry has no control over Parliament. As a matter of fact, the Cabinet has become so strong that it dictates to Parliament. The ministry exercises its control over Parliament in the following ways :—

(1) The most important power of control which the British Ministry possesses is the power of dissolution. Unlike France, the British Ministry is not helpless before Parliament. Even when a ministry has been defeated in the House of Commons, it need not resign. The Prime Minister can go to the King and ask him to dissolve the House of Commons. The convention is that when the Prime Minister approaches the King with such a request, the latter must dissolve the House of Commons. It is to be noted that this power of the ministry is very important.

Members of the House of Commons think twice before passing a vote of no-confidence against the ministry Every member is afraid of a new general election. It is not only inconvenient to run about for the purpose of getting votes, it is also an expensive affair Nobody has so much of surplus money which he can throw away for the sake of mere fun Moreover, some members are elected merely on the margin They are afraid of a general election. They may not be re-elected All these factors combine together to make the Cabinet strong This power of dissolution weakens the hands of the members of the House of Commons

2. All important legislation is initiated by the Cabinet Most of the time of the Parliament is monopolised by the Bills introduced by the ministry The members of the Parliament must discuss those Bills which have been put forward by the Cabinet It is up to the ministry to decide the time table of Parliament. It decides the number of days for which Parliament is to meet. It also decides the date on which it is to meet It also determines how many days are to be allotted for the business of the government and how much time is to be given to the private Bills. No private Bill has any chance of being passed if it is opposed by the ministry. Thus, the ministry controls legislation in Parliament

3. The growth of the rigid party-system in England has strengthened the hold of the Cabinet over Parliament The result is that every member who belongs to a party must vote as he is dictated to do by the whip of the party Thus, whatever the Cabinet decides is carried through the Parliament with the help of the party-machine

It has rightly been said that "To say that at present Cabinet legislates with the advice and consent of Parliament would hardly be an exaggeration"

Q 36. How does the House of Commons control the ministry?

Ans The House of Commons exercises control over the ministry in the following ways —

(1) The members of Parliament can ask questions and supplementary questions from the ministers who sit in Parlia-

ment. These questions have the effect of bringing to light the misdeeds of the ministry. The result is that the ministry dare not do anything illegal on account of this fear. It has rightly been said that "there is no more valuable safe-guard against mal-administration, no more effective method of bringing the search-light of criticism to bear on the action or inaction of the executive government and its subordinates", than that provided by the method of asking questions and supplementary questions

2 The House of Commons may appoint Parliamentary Committees and Royal Commissions for the purpose of getting information about certain departments. By this method, a department may be criticised and held up to ridicule.

3. When the King has made his speech from the throne, amendments may be put forward for the purpose of criticising the general policy of the ministry.

4. At the time of discussion of the Budget, the members may criticise the various departments for which grants are being voted upon. The members can criticise the departments on the occasion of demands for supplementary grants.

5. Members of Parliament may pass a vote of no-confidence against a ministry. The ministry remains in office so long as it enjoys the confidence of the House of Commons. If it is defeated in the House of Commons, it has two courses open to itself. It can either resign or ask the King to dissolve the House of Commons But if the ministry does not get a majority in the new elections, it must resign.

It is to be noted that the day-to-day work of the administration is carried on by the ministry which is responsible to the Parliament But this work is done under the supervision of the Parliament. The latter can take to task the ministry for its acts of omission and commission The position has been described by President Lowell in these words : "If the Cabinet today legislates with the advice and consent of the House, it administers subject to its constant supervision and criticism".

☞Q 37. What factors have been responsible for the dictatorship of the Cabinet in England ?

Ans. Every student of Political Science must notice the enormous increase in the powers of the Cabinet in England The power has increased to such an extent that the people call it the dictatorship of the Cabinet. There are many reasons for the increase in the powers of the Cabinet.

1. The first cause is the rigidity of the party-system in England All the members of political party must have the same views on important matters. They must vote as they are directed to do so by their party-whips No member can afford to go against the wishes of his party and still remain in politics The two-party system does not leave much of discretion in the hands of its members Either they must act according to the directive of their party or commit political suicide The result is that the members of the Cabinet were sure that whatever they will place before Parliament, shall be passed. Thus, while the freedom of the members of Parliament has diminished, the English Cabinet has become very strong.

2 Another cause is the collective responsibility of the ministers. If one minister is attacked, all other ministers come to his rescue. The result is that all are saved. Collective responsibility strengthens the hands of the ministers. Unity is strength and the same can be said of the ministers who work in a team-spirit and help one another. The consequences of the individual responsibility of the ministers are well-known to the students of the French Constitution

3 Another cause is the growth of the delegated legislation. Formerly, every bill was thoroughly discussed and then passed by Parliament But at present, there is a tendency to pass what are known as "skeleton bills." What is done is that the general principles are laid down in the enactment passed by the Parliament and the power of making rules and regulations is delegated to the departments concerned. In many cases, the size of these rules and regulations is much bigger than that of the original enactment itself. The growth of the delegated legislation is due to many reasons. Firstly, the number of laws to be passed by Parliament in any session has become very large. The size of every bill also has increased. Consequently, there is no time with the Parliament to discuss every bill in

detail. All that they can do is to pass merely the general principles of the legislation Moreover, the present-day legislation has become complicated and technical Most of the members of the Parliament do not find themselves qualified to discuss the technical legislation. Under the circumstances, it is considered desirable that the details of legislation be left into the hands of the departments concerned on account of their special knowledge and skill In certain cases, the Orders-in-Council issued by the departments are required to be placed before Parliament, and the members are allowed to discuss them and demand their cancellation But that is not always the case. In many cases, the departments can just print those rules in the Government Gazette and they come to have the force of law. Anyhow, the growth of delegated legislation had added to the powers of the Cabinet. Formerly, it had only executive powers It could get laws passed through the Parliament As a result of delegated legislation, it can add to the laws passed by Parliament.

4. Another factor that has added to the powers of the Cabinet is the growth of administrative justice in England There is a tendency to rely more on the bureaucracy than on the ordinary courts of law Lord Hewart in his book entitled "The New Despotism" has condemned the new tendency There are others also who have joined hands with him But the tendency is increasing day by day. As a result of this, more and more cases are being taken away from the hands of the ordinary courts of the country

(i) Some Acts confer powers on officials to hear complaints, but they reserve the right to appeal to the ordinary courts. Such an Act is the Income-Tax Act, 1918, which gives authority to the Income-Tax Commissioners.

(ii) Certain Acts have set up the elaborate organisations of Civil Servants for the hearing of claims, appeals and final appeals Under the Unemployment Act, 1920, an "Insurance Officer" decides all questions of Un-employment benefit The claimant can appeal against his decision to a "Court of Referees". An appeal can be taken to an Umpire whose decision is final and conclusive.

(iii) Certain Acts provide for an appeal to a Government Department against the decision of local authorities or Civil Servants. The Road Traffic Act, 1930, set up a Traffic Commissioner "who deals with all applications for a Public Service Vehicle Licence" Appeals can be taken against his decision to the Minister of Transport, but no further appeal or review is possible against the decision of the Minister of Transport Such provisions are made in many other enactments It is to be seen that the result of all this is that the Government Departments have come to possess judicial powers also It is to be noted that the growth of delegated legislation and administrative justice have gone hand in hand When the ministers issue Orders-in-Council, there is a natural tendency on their part to take over judicial powers for themselves

Another factor that has made the Cabinet strong is the power of dissolution In the case of France, when the ministers are defeated in the legislature, they cannot demand its dissolution The result of this has been the weakening of the French ministers which are made to go very often But in the case of England, when a ministry is defeated in Parliament, it is not necessary that it must resign. The Prime Minister has the right to ask the King to dissolve the House of Commons The convention is that when the Prime Minister requests the King to dissolve the House of Commons, the King must do so The result of this power is that the members of Parliament think many times before they dare to pass a vote of no-confidence against the ministry in power Every new election costs many thousands It also involves a lot of inconvenience It is not also necessary that the members who were previously elected, will also be re-elected There is always the element of chance There are some members who might have been elected just on the margin There is every likelihood of their being defeated at the next elections All these factors work together to dissuade the members from voting against the ministry It is clear that the power of dissolution is a very strong weapon in the hands of the ministry. The result is that the Cabinet becomes very strong It has no fear that the members of Parliament will vote against it just for the sake of mere fun The members of the Cabinet also know that if they are defeated, they may

not come to power for years to come. There is no chance of their being taken into the Cabinet formed by the Opposition They work and fight enthusiastically for their parties.

☞ **Q. 38. "The Cabinet in Great Britain is omnipotent and virtual dictator of the country." Discuss.**

Ans Please refer to Question 37.

Q. 39. "The House of Commons is subservient to the Cabinet ' Discuss

Ans. Please refer to Question 37.

☞ **Q 40 "Today, it is not the House of Commons which controls the Cabinet but the Cabinet which controls the House". Explain and account for this development**

Ans Please refer to Question 37.

Q. 41. "The Cabinet has usurped practically all the important functions of the Parliament". Discuss

Ans. Please refer to Question 37.

☞ **Q 42. Write a critical note on the position of of the Prime Minister of England.**

Ans The Prime Minister occupies the most important position in the English Constitution He is rightly called the key-stone of the Cabinet Arch He is the most outstanding personality in England. He is the leader of the majority party in the House of Commons.

Formerly, a Prime Minister could belong even to the House of Lords, as Palmerston, Rosebury, etc. did But the new convention is that the Prime Minister must belong to the House of Commons. When the General Elections are over, the King has to call the leader of the majority party to form the ministry, and

the latter does so as the Prime Minister. On account of two-party system in England, the King has no discretion in this matter. He must call the leader of the majority party to form the ministry.

The King also cannot interfere in the choice of his colleragues The Prime Minister is absolutely free to make his own choice, but there are certain limitations. Prime Minister belongs to the majority party and he must include the prominent members of his party in the Cabinet. Without them, his Cabinet will not be strong Although the members cannot dictate to him as to which departments should be given to which of the members, the Prime Minister cannot afford to ignore the wishes of the members of his party He cannot forget that his strength is due to the backing of his party and the party means the members of his party. Experience has shown that the Prime Minister has sometimes to accept the wishes of his colleagues and give a particular department to a particular member of the party, although he wants to keep the same for himself This was done by Macdonald in 1924, when he gave the department of Foreign Affairs to Henderson.

Prime Minister has been described as the "first among equals". There is no doubt that the relation of the Prime Minister with other ministers is one of the colleagues He is merely the Captain of the team The Captain never forgets that he is a captain, because there are others who are prepared to follow him and act according to his instructions. He is their Captain because he can inspire confidence in them Thus, while the members of his party will be happy to follow him, the Prime Minister has to respect their wishes It may, however, be pointed out that the rigid party system in England makes the position of Prime Minister very strong. He can always depend upon the support of the members of his party. But this does not mean that any Prime Minister will ignore altogether the wishes of his colleagues. If he does so, his fate will be the same as that of Ramsay Macdonald in 1931 when he agreed to form the National Government without consulting his party members.

The Prime Minister has been described as the sun and the members as the moon, but it is a wrong simile. the ministers

are as much elected by the people as the Prime Minister and are not dependent upon him while the moon gets the light from the sun. It is better to compare the Prime Minister with the moon and other ministers with the stars. The difference between them is only a matter of degree and not that of kind. The moon and stars get their light from the sun and the Prime Minister and ministers get their strength from the people.

The Prime Minister presides over the meetings of the ministers He is given a free hand in the matter of making decisions. But this does not mean that the Prime Minister will not accept the point of view of other ministers. He has to submit to the unanimous opinion of his colleagues The danger of not doing so is obvious. The Prime Minister may be thrown out, if he does not carry with him his colleagues He will be weakened if his followers become disgruntled

Regarding the position of Prime Minister, Prof. Laski says : "He is central to its promotion, central to its life and central to its death No Cabinet can fail to take its complexion from what he is and does in its destruction" Dr Finer says that "the Prime Minister is no Caesar. He is not an unchangeable oracle His views are not dooms. He is always on sufferance and its terms are whether he can render undubitable service." In the long run, the position of the Prime Minister depends upon his personality

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Q. 43 "The Prime Minister is the pivot on which the entire governmental machinery revolves." (Bagehot). Discuss.

Ans. Please refer to Question 42.

Q. 44 "The Prime Minister is the 'Grand Vizier' of the Parliamentary system and the corner-stone of the British Constitution." Discuss.

Ans. Please refer to Question 42.

Q 45. "Interstellas luna minores i. e, a moon among the stars". In view of the phrase, discuss the position of the British Prime Minister.

Ans. Please refer to Question 42.

Q 46 "The Prime Minister is the sun round which the planets (e g, the other ministers) revolve" (Jennings) Discuss.

Ans. Please refer to Question 42.

Q 47 "The Prime Minister in relation to the ministers generally is often described by the phrase 'primus inter pares", Explain.

Ans. Please refer to Question 42

☞ **Q 48 What are the advantages of having amateur ministers and expert subordinates?**

Ans. It may look strange, but the fact is that in England ministers are amateurs who know hardly anything about the departments under their control, but their subordinates are experts Sidney Low referred to this fact in these words, "We require some acquaintance with the technicalities of their work from the subordinate officials, but none from the responsible chiefs A youth must pass an examination in arithmetic before he can hold a second-class clerkship in the treasury, but a Chancellor of the Exchequer may be a middle-aged man of the world, who has forgotten what little he ever learnt about figures at Eton or Oxford, and is innocently anxious to know the meaning of 'Those little dots', when first confronted with treasury accounts worked out in decimals"

Prof Munro says. "The British war office has been headed at times by a philosopher or a journalist, the admiralty by a merchant or a barrister, and the Board of Trade by a university professor."

It is pointed out that "a young officer will be refused his promotion to Captain's rank if he could not show some acquaintance with tactics from military history, but the minister for war

may be a man of peace—we have had such—who regards all soldiering with dislike and has abstained from getting to know anything about it.

1 The system may not commend itself to the ignorant, but experience has shown that there are certain advantages to be derived from such a system. The first advantage is that two of a trade seldom agree If both the minister and his subordinates had been experts, they would not have pulled on nicely. Each would have been a critic of the other. That would have resulted in a lot of unpleasantness. Since under the English system, the minister is merely an amateur and his subordinate an expert, there is a greater possibility of their mutual cooperation. While his subordinate puts before him all the relevant facts and figures, the ministers can dispose of the case according to what seems to be desirable to the Minister concerned

2. Even if a minister is an expert, he cannot know all the details regarding the different branches of his department. Thus, the Principal of a College may be appointed as the minister of education He may know something about College education, but his knowledge of women-education or physical education or technical education may be next to nothing. Hence, it is no use having even an expert as a minister.

3. Ministers hold office so long as they enjoy the confidence of the House of Commons That means that their tenure of office is not fixed They do not know as to how long they are to act as the head of the department Under these circumstances, no minister is prepared to bother himself about all the details of his department The case is different with his subordinates. The latter know that they will keep on working in their department unmindful of the changes in the ministries. Since they know that they have to work for their whole life in their department, they can afford to know all the intricacies of their departments

4. Moreover, a minister can be transferred from one Department to another Thus, Sir Samuel Hoare was at one time the Foreign Secretary. Later on, he became the Secretary of State for India and was responsible for passing the Government of India Act, 1935. When the war broke out in

1939, he was the Home Secretary Similarly, Sir John Simon has acted as the Foreign Secretary, the Home Secretary, the Chancellor of the Exchequer and Lord Chancellor on different occasions. Lord Halifax who was the Governor General of India, was made the Foreign Secretary and later on appointed as the British Ambassador in the U S. A. The same was the case with Winston Churchill He has also held offices in different departments Sir Stafford Cripps and Dr. Dalton have also held different portfolios Under these circumstances, it is not possible for any individual to master all the facts of his department. No wonder that the ministers prefer to be amateurs rather than become experts in their own line

(5) The function of a minister is not merely to act as the head of his department. He must take interest in the party intrigues so that his own position may remain safe He must keep himself in touch with the electorate which elected him and visit his constituency and oblige the voters. He must work in connection with the election-campaign of his party in different areas so that his party may remain strong. He must be ready to answer the different questions put to him in the House of Commons. And besides all this, he must attend to the work of his department Since the ministers are ordinary human beings, nobody will expect them to be experts in their departments.

(6) If the ministers were experts in their own line, they will not be able to perform their duties efficiently The reason is that experts are usually static and cannot be expected to be quick-witted as required by the Parliamentary life The ministers are expected to be possessed of a lot of common-sense so that they may do well in the Parliament where the real battle is to be fought It is to be remembered that if the ministers fail in the House of Commons to stand the attack of the Opposition, they have to resign Hence, they must be careful about those qualities which make them better debaters

(7) It is said that an expert is one who knows everything about something but not something about everything The result is that if an expert becomes a minister, he may care for the interests of his own department and forget altogether the

interests of other departments But a minister must take into account the interests of other departments also. He may be the Minister of War, but he must have at heart the interests of others also. Though Minister of Agriculture, he must save others besides the landowners Hence, he need not be an expert.

Under this system, we have the combination of the amateurs and the experts. To quote Prof Munro, "Both are essential, one of them to make a Government popular , the other to make it efficient. And the test of a good Government is its successful combination of democracy with efficiency" The ministers know what the people want and that can be done efficiently by their expert subordinates.

Q. 49 "In the English Government, there is an ideal combination of the expert and lay elements". Discuss.

Ans Please refer to Q 48.

Q. 50. Discuss the position of the Civil Service in England.

Ans. The importance of the permanent Civil Service is due to the fact that the ministers have to depend upon them for carrying out their policy. As a matter of fact, it is the civil servants who help the ministers to formulate their policy by providing them with facts and figures When that has been done, it rests with them to work out the policy.

Sir Warren Fisher brought out the position of the civil servants in 1929 in these words · "Determination of policy is the function of ministers, and once a policy is determined, it is the unquestioned and unquestionable business of the civil servants to strive to carry out that policy with precisely the same good-will whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time, it is the traditional duty of civil servants, while decisions are formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may be in accord or not with the minister's initial

view. The presentation to the minister of relevant facts, the ascertainment and marshalling of which may often call into play the whole organisation of the department, demands of the civil servant the greatest care. The presentation of inference from the facts equally demands from him all the wisdom and all the detachment he can command" It is clear that the ministers cannot accomplish anything substantial without the help and co-operation of the civil servants

In the first half of the 19th century, the civil servants were recruited by a process of nomination The system was thoroughly undesirable and consequently, following the example of the English East India Company, the system of competitive examinations was recommended in 1854 By an Order-in-Council of 1855, a Civil Service Commission of the members was instituted and this body was to conduct examinations In 1870, Gladstone made open competitive examinations obligatory practically throughout the Civil Service

The system of examinations in England differs from that in U S A While in America, an attempt is made to test the professional or technical efficiency of the candidates for a particular job, the English system aims at finding out the general ability of the candidates The object is merely to find out the general level of intelligence of the candidates The system of interviews also helps to judge the personality of the candidates The great virtue of the system is that with a little training, the civil servants can fit in any department It is easy to transfer them from one department to another Experience shows that the selected candidates do their work efficiently This system has also attracted the best type of the graduates to the Civil Service

The constitutional position of the civil servants is that they are appointed by the Crown and hold office during the pleasure of the Crown They can be dismissed at any time But as a matter of fact, once a person has been appointed, he holds office till 60 and can only be dismissed on account of inefficiency Promotions are made on the basis of seniority, efficiency, approved service, etc. While promotions are made in the lower grades on the basis of departmental examinations, in the case of higher grades, selections are made by the heads of

the departments on the basis of service-records. The civil servants are purely non-political in character. They cannot join any political party and should not do anything which shows their allegiance or affiliation to any political party. They should act in a non-partisan manner It is for this reason that they go on in their departments, while ministries keep on changing. It is their duty to carry out the policy of the government in power. It matters little whether they approve of the policy or not. Their duty is merely to carry out that policy for which the responsibility lies on the shoulders of the ministers. If they have to be true to their job, they must not bring in their prejudices while performing their duties.

Formerly, they were not allowed to vote in the Parliamentary elections. But now the right of vote has been given to them. But they must vote in such a way that their partisan character is not known. It is rightly pointed out that a civil servant should merely watch the tide of political life and should not dip into it himself. A civil servant cannot be a member of the House of Commons. If he wants to be M. P., he must resign his job.

A civil servant is not in the public eye as the ministers are. It is the ministers and not the civil servants who are responsible for whatever happens in their departments. The convention is that the civil servants are neither to be praised nor condemned in parliament It is their political chiefs, i.e , the ministers, who must take all the credit or the blame for whatever is done by the civil servants.

Broadly speaking, the English Civil Service consists of three classes About 3,30,000 persons are employed in industrial establishments such as the Arsenal, Post Office and the Dockyards. Their work is merely technical and of a routine nature The second class consists of 70,000 clerical officials. Their work is also of a routine nature. The third class consists of about 16,000 executive officials, 2,500 inspectors and 7,000 professional, technical and scientific workers As a matter of fact, it is the persons of the third class who help in the formation of the policy. The high

class officials are consulted by the amateur ministers who ordinarily follow their advice

The critics have pointed out the following defects in the present system —

1. The system of examinations is faulty because too much emphasis is laid on the classes The result is that the graduates of the Universities of Oxford and Cambridge are put in a place of advantage

2 All the high posts are reserved for the sons of rich people The reason is that very high academic qualifications are required from the candidates and it is only the rich who can give that high education to their children Since the poor cannot afford that, they are deprived of any chance of occupying high offices.

3. The method of promotion is too mechanical and leaves no room for the encouragement of deserving civil servants

4 Prof Laski says that the nation cannot make the best use of its officials by giving the deserving persons the highest posts because the grades of the Civil Services are very rigid.

5 The civil servants have not shown the energy and initiative which are required for tackling the modern problems. They are slow in their work and follow the old traditions Prof Laski refers to this fact in the following words . "Innovation on the grand scale, utter frankness, relentless attack upon obstructive interests, rapid adaptation to the wholly unexpected, the ruthless rejection of the men who do not rise to the occasion, these are the qualities for which war calls in officials , and they are pretty exactly the qualities against which the main genius of our Civil Service has been directed "

6. Another charge against the Civil Service is that it is growing into a great bureaucrative machine. The result is that the ministers merely follow the advice of their departments Prof. Ramsay Muir says that the minister "will, in ninety-nine cases out of a hundred, simply accepted their view, and sign his name on the dotted line On the whole, the policy of the 'Office' will nearly always prevail , its powers of quiet

persistence and of quiet obstruction, and its command of all the facts, are irresistible except to a man of commanding power."

Q 51. "The minister is a tool or a rubber stamp in the hands of the permanent official" Discuss.

Ans This statement emphasises the important part played by the British bureaucracy in the administration of the country. It is well-known that the ministers in England are amateurs They are not the masters of details of the departments of which they are the heads. The reasons for this are well-known. The ministers are not the permanent heads of the department According to Munro, "Cabinets and Parliaments come and go, but like Tennyson's brook the permanent staff keeps placidly on its way" If the ministers do not know all about their departments, the civil servants working under them know all about their departments The ministers can always depend upon them for any information they required. Modern life has become very complicated and consequently a lot is expected to be done within a short time. It is this force of circumstances that makes the busy minister dependent on the informations supplied to him by his subordinates. Herein lies the danger of the ministers being unduly influenced by the opinions of his subordinates Some ministers may merely sign on the dotted line.

While the significance of the part played by the civil servants cannot be denied, it is wrong to maintain that the ministers are merely tools in the hands of the permanent officials. It need not be emphasised that the ministers are public-men and as such have to follow those policies which the public demands and not what is dictated by their subordinates The subordinates also know that the policy-making is the function of the minister and their work is merely to carry out the same in an efficient manner. By no strech of imagination can they be said to dictate the policy of the Ministers Of course, Ministers depend upon them a good deal.

CHAPTER III

THE LEGISLATURE IN ENGLAND

☞Q. 52. Discuss the composition and powers of the House of Lords?

Ans. It is generally stated that the House of Lords is a hereditary house. But this is not strictly true. Although most of the members of the House of Lords are hereditary, there are others who do not belong to that category This will be clear from the following explanation of the composition of the House of Lords —

1. The first category consists of the hereditary peers Those are the peers of England created before 1707, peers of Great Britain created before 1801, and the peers of the United Kingdom created thereafter. It is to be noted that the King has the power to create an unlimited number of hereditary peers on the recommendation of the Prime Minister An examination of the list of the peers shows that most of the peers have been created by this method and that too in recent times

2. The Act of Union between England and Scotland (1707) authorised the old Scottish peers to send 16 members to the House of Lords These persons are neither hereditary nor elected for life They are elected only for a session of the Parliament.

3 The Act of Union between England and Ireland (1800) authorised the old Irish peers to send 28 peers to the House of Lords. Unlike Scotland, the Irish peers were elected for life. But the things changed after the creation of the Irish Free State. Although the sitting members were not disturbed, the vacancies after the death of the old peers are not filled. The result is that after the lapse of some more time, the Irish peers will disappear from the House of Lords.

4 There are 26 spiritual peers. These are a relics of the important position once occupied by the clergymen in the House of Lords These persons are neither hereditary nor for life or a session These are ex-officio members So long as a particular person occupies a particular position in the Church, he sits also in the House of Lords As soon as he vacates the office, he loses his seat also. The Archbishops of Canterbury and York and the

Bishops of London, Durham and Winchester have their seats in the House of Lords The rest of the seats are distributed among the other bishops on the basis of seniority in office.

5 Last, but not least, are the seven Law-Lords These persons are appointed for life The object of appointing these Lords of Appeal is to perform efficiently the judicial functions of the House of Lords. If the House of Lords is to act as the highest Court of Appeal for Great Britain and North Ireland, there must be persons who possess the highest judicial qualifications Thus, these seven law-lords are appointed for life on account of their distinguished legal knowledge.

Powers of the House of Lords

1 The House of Lords has two kinds of powers · judicial and legislative. Unlike other second Chambers, the House of Lords exercise powers of original jurisdiction and also appellate powers The House can try peers for treason or felony. An attempt is being made to take away this power In cases of impeachment, the members of the House of Commons impeach a person before the House of Lords. But it is to be noted that powers of original jurisdiction of the House of Lords do not possess any significance

2. As already pointed out, the House of Lords is the highest Court of Appeal for Great Britain and Northern Ireland Although all the peers have the right to sit in the House of Lords when it hears cases of appeal, the convention is that only the seven law-lords with Lord Chancellor should sit at that time. Convention is obeyed because in case of its violation, there may be a demand to take away this power from the hands of the House of Lords. If the House of Lords is to act as the highest Court of Appeal, it must have among its members, persons who are great legal luminaries and can do justice to the work entrusted to them

Legislative Powers

As regards the legislative powers, the House of Lords had co-ordinate power with the House of Commons before 1911 The only difference was that the money bills could originate only in the House of Commons. Otherwise, an

ordinary bill could be introduced either in the House of Lords or the House of Commons The consent of both the Houses was necessary to pass a bill. The House of Lords could amend or reject not only the ordinary public bills but also the money bills It is true that ordinarily, the House of Lords did not reject the money bills, but there was nothing in law to check it if it was determined to use this power Thus, it was that the Paper Duties Bill of 1860 was rejected by the House of Lords Similarly, the Budget of 1909 was rejected by the House of Lords.

Changes made by Act of 1911

But things have changed after the passing of the Parliament Act of 1911 The new Act provides that money bills are to originate in the House of Commons as before. But if the House of Commons passes a money bill and sends it on to the House of Lords, it is considered to have been passed after a month whether the House of Lords approves of it or not. Thus, it is clear that the House of Lords has been completely deprived of all its control over the money bills. The Act defines a money bill as one which the Speaker certifies to be a money bill

As regards the ordinary public bills, if the House of Commons passes it in three consecutive sessions and the years intervenes between the second reading in the first session and the third reading in third session, the bill is considered to have been passed, whether the House of Lords approves of it or not. Thus, a bill can be passed even without the consent of the House of Lords if the House of Commons is determined to get it done

The life of the House of Commons was reduced from 7 to 5 years It was laid down that any bill which aimed at increasing, it must be passed with the consent of the House of Lords.

The question arises whether the Act of 1911 has weakened the powers of the House of Lords or not, and if so, to what extent There is no doubt that legally speaking, the House of Lords stands nowhere in the matter of money bills. It is simply ignored. This is evidently due to the fact that the popular House must have control over the purpose.

So far as the ordinary bills are concerned, the powers of the House of Lords are still substantial It is not denied that the members of the House of Commons can pass any measure in the teeth of the House of Lords But the question is whether the members of the House of Commons would like to follow this course or not Practical politics shows that they will not The reason is obvious. If the members of the House of Commons alienate the sympathies of the House of Lords, the latter may reject every measure of the Lower House. That will be hardly desirable It is more politic to keep the Upper House in good humour It is better to give up a particular measure in deference to the wishes of the Upper House. It is possible that on another occasion the Upper House may also let a measure of the Lower House pass. The two Houses can work only in an atmosphere of give-and-take. Moreover, it is not possible for the House of Commons to pass every bill three times. There is already a great rush of work in the Lower House and consequently, many devices have to be restored to or cope with the problem Under these circumstances, it is not possible for the Lower House to alienate the Upper House This is borne out by the fact that although the Act was passed in 1911, only two laws were passed by following this extraordinary procedure Those two laws were the Irish Home Rule Act of 1914, and the Welsh Church Act of 1914 It is also to be noted that the procedure prescribed in the Act of 1911, cannot be made use of in emergency legislation Where the remedy required is immediate, it is difficult to wait for one year.

Criticism.

1. The House of Lords has been the subject of adverse criticism on all sides. It is pointed out that it is both superfluous and a nuisance. When the Conservative Party is in power in the House of Commons, the House of Lords merely dittos every bill that comes from the House of Commons It simply does not question whether those bills are useful or not. The result is that the House of Lords becomes superfluous under these circumstances On the other hand, when the Labour Party is supreme in the Lower House, every bill introduced by the ministry is adversely criticised and an attempt is made to nullify the ministry. It is true that the latter does not resign even when the House of Lords does not approve of a measure introduced by the ministry, but the fact remains that

this act of the House of Lords has its nuisance value The Government cannot implement its policy because it cannot get those bills passed which it considers desirable The Labour Party was so much disgusted with the attitude of the House of Lords that it declared its intention to abolish the Upper House in 1934 in the following words. "The Labour Party, given a majority, would interpret the mandate as conferring upon it the right, particularly if the House of Lords seeks to wreck its essentail measures, forthwith to the abolition of that Chamber"

2. Prof Ramsay Muir describes the House of Lords as "the fortress of Wealth" It is not representative of the different elements in the society It merely represents the plutocracy *i e*, financiers, industrial magnates, company directors, etc. Labour, trade-unions, education, art, science and women do not fixed any representation in that House

3 Prof Laski refers to the class-bias of the House of Lords in the following words "The House of Lords is not an impartial and objective body which takes an independent and detached view of the public opinion it encounters Its composition makes it, and it intended to make it, a fundamental part of the institutional strategy of the Right It is intended to see. as Lord Balfour once put it, that in office or out of it, the Conservative party is permanently in power" It is to be noted that an overwhelming majority of its members are Conservatives and the new additions from the Labour Party do not materially count in its working

4 Sidney and Beatrice Webb condemned the House of Lords in these words "Its decisions are vitiated by its composition, it is the worst representative assembly in which no member of the manual working class, or of the great classes of shopkeepers, clerks and teachers. none of the half of all the citizens who are of the female sex, and practically none of religious conformity or art, science and literature."

5 Critics point out that the hereditary House of Lords is an anachronism in the modern days of democracy As it seems odd to talk of hereditary mathematicians, doctors, lawyers or historians, so it looks strange to speak of the hereditary. members who legislate for the whole of the British Empire Such a

thing is not in accordance with the spirit of the times and hence must be either mended or ended.

6 Another complaint against the House is that most of its members are absolutely careless regarding the performance of their duties Out of a total of 729 members in 1938, it was calculated that 371 never spoke even once in any debate from 1919 to 1931, 111 never voted in a single decision and the average number of peers taking part in a decision was 83. Generally, about 40 to 50 members participate in the deliberations of the House It is pointed out that there are a few hundred members who may never have entered even once in life in the House of Lords They may be busy in hunting foxes with the help of their dogs Hence, there is a strong demand either to end the House or to mend it in such a way as to meet the needs of the times

Usefulness of House of Lords.

1 If there are certain short-comings in the House of Lords, it has also certain relieving features of its own It is true that very few members attend its meetings. But it cannot be denied that those who participate in its discussions, are possessed of a lot of experience and knowledge The result is that they can talk with authority Hence, the members of the House of Lords make a real contribution to legislation itself.

2 It is to be noted that the debates in the House of Lords are of a very high standard and this is particularly so on questions of foreign policy. Moreover, there is more time for a thorough and leisurely discussion of the subject in hand. The hurry which is to be witnessed in the House of Commons, is absent from the House of Lords Unlike the Lower House, the members of the House of Lords can arrange their debates among themselves. There is no Speaker to put restrictions on the liberty of the members to speak.

3. The members of the House of Lords perform a very useful function in the matter of private bills While the members of the Lower House are over-worked and have no leisure from their Parliamentary or personal preoccupations, the Lords are willing to take a day off to visit a locality in order to report on a particular private bill. In view of their

services in this field, it has been maintained that some other substitute to do this work of the House of Lords shall have to be found in case the House of Lords is abolished

4. The House of Lords is also a **delaying Chamber.** By refusing to pass a particular bill, it can give some time to the public opinion to express itself on the same. "Time reveals defects, new points of views develop, grievances change, people want more or less drastic provisions." Hence, the House of Lords performs a useful service by delaying the passage of the bills.

5. The House of Lords is also a "reservoir of ministers." It can supply some of the ministers. Experience shows that it is not always easy for a minister to do the work of the department and also attend to his duties in the House of Commons. Hence, it is found convenient to take a few ministers from the House of Lords This is so particularly in the case of foreign affairs. If the minister for foreign affairs belongs to the Upper House, he is not under any obligation to explain to his constituents all the secrets of his own department The Act of 1937 provides that there must be at least two Cabinet Ministers of the highest rank from the House of Lords Salisbury had in his Cabinet 13 peers, Balfour 8 and Chamberlain 6 in 1937

Prof Laski sums up his remarks on the House of Lords in these words · "For normal purposes, there, the House of Lords is a body of less than fifty members. There is no doubt that, as such a body, and in quiet times, it possesses great merits Its main debates are likely to be conducted, on either side by statesmen of standing and experience, with occasional interjections from representative Churchmen or an eminent law-lords It is a leisurely Chamber ; and in quiet time again, it can scrutinize with a leisured efficiency the bills sent up to it from the House of Commons. It can raise, also, large public questions which the government of the day does not believe to be ripe for legislation "

Q. 53. "After the Parliament Act of 1911 the House of Lords is a mere shadow of its former self." Discuss.

Ans. Please refer to Q 52.

Q 54. "The House of Lords is not only a Second but a Secondary Chamber." Explain.

Ans Please refer to Q 52.

Q 55. The House of Lords should be ended or mended" Discuss.

Ans Please refer to Q 52

☞ **Q. 56 Compare the House of Lords with the American Senate**

Ans. There is a world of difference between the House of Lords and the American Senate The former is one of the weakest second Chamber and the latter is the strongest Chamber in the world

Most of the members of the House of Lords are hereditary This weakens the position of the House of Lords There is no public backing The members of the American Senate are elected by the people directly As such, they enjoy the confidence and backing of the people in their deliberations and decisions.

In the field of legislation, the posiition of House of the Lords has become every weak after the passing of the Parliament Act of 1911 It has practically no control over Money Bills. After a Money Bill has been passed by the House of Commons, it is sent to the House of Lords The House of Lords can sit on it for a month and nothing more It has no right to change the Money Bill. As regards the ordinary bills, a bill can be passed even in the teeth of opposition of the House of Lords if the same bill is passed in three consecutive sessions and one year passes between the second reading of the first session and the third reading in the third session In the case of the American Senate, it has substantial control over Money Bills It can transform them in any way it pleases The only limitation is that Money Bills cannot originate in the Senate As regards ordinary bills, the Senate has equal powers with the House of Representatives On the whole, it is stronger House than the House of Representatives. It has been rightly said that if a person is given a choice, he would prefer

to sit in the Senate rather than to sit in the House of Representatives. The case is absolutely different with the House of Lords All brilliant Englishmen would prefer to sit in the House of Commons and not in the House of Lords.

Both the American Senate and the House of Lords possess judicial powers, but the House of Lords has more powers than the Senate. Both can hear impeachments But the House of Lords is also the highest Court of Appeal for England That is not the case with the American Senate

The American Senate enjoys certain executive powers. It can ratify treaties It can disapprove the appointments made by the President However, such powers are not possessed by the House of Lords

The House of Lords is not only a second Chamber, but also a secondary Chamber On the other hand, the American Senate is a very vigorous Chamber having more powers and authority than the House of Representatives

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☞Q. 57 Write a critical note on the position of the Lord Chancellor in England

Ans The office of Lord Chancellor is a very old one. It can be traced to the reign of Edward, the Confessor. He is a member of the Cabinet and also a member of the Privy Council. As its functions are essentially legal, he must be a member of the bar He is also a K. C. or King's Counsel

Lord Chancellor is the chairman of the House of Lords. But his position is different from that of the Speaker of the House of Commons He is a party-man He takes part in the debates. He does not possess the same powers for maintaining order and controlling the course of debates in the House of Lords as the Speaker does in the House of Commons. Whenever there is any controversy on any point, the House decides itself and not the Lord Chancellor

Lord Chancellor is the chief legal advisor of the Crown. He is assisted in his work by the Attorney-General and the Solicitor-General. He reads the speech at the opening of the Parliament if the King is absent.

Lord Chancellor is the highest judicial officer in the

country. In this capacity, he makes all important appointments to judicial offices He is one of the judges of the Supreme Court He is the President of the High Court of Justice He is the President of the Chancery Division and the Court of Appeal He nominates the judges of the High Court, County Court judges and Justices of the Peace

His office carries a good salary As a judge, he gets £ 6,000 per annum As the Chairman of the House of Lords, he gets another £ 4,000 per annum. He is entitled to a pension of £ 5,000 per annum.

☞ Q 58. Discuss the position of the English Speaker.

Ans The Speaker of the House of Commons occupies a unique position in English society. Although he is elected on party lines, he becomes a no-party man after his election and stops attending the meetings of his own party. He does not participate in the politics of the country. He remains above the storm and stress of the party intrigues and deals with all the members of the House of Commons in a dispassionate and impartial manner

If the Speaker rises above party-politics, he gets his compensation for the same. Once he is elected Speaker, he is allowed to carry on as long as he likes It is his own discretion whether he will like to continue or not But so long as he wishes to occupy the chair, he will be re-elected the Speaker It is absolutely immaterial, which party-majority was responsible for his election as Speaker at the beginning But once he is elected, he is re-elected whether the original party commands a majority in in the House or not

The convention is that once a Speaker has been elected, there is no election from his constituency. He is always returned unopposed. The reason is obvious Since the Speaker has given up his party, there is no chance of his election on an independent ticket. As a matter of fact, the people of his constituency regard it as a matter of pride that they have the honour to have the Speaker as their representative in the House. But in 1935, the Labour Party violated this convention. Since the old Speaker was helped by the Conservative and

Liberal Parties, he was re-elected from his constituency. Thus, the attempt to break the convention failed The contention of the Labour Party was that since the constituency from which the Speaker was returned, had no election so long as he chose to continue as Speaker, the result was that the constituency was virtually disfranchised It was suggested that the Speaker should be given a fictitious constituency and if the fiction was disliked, he should be taken to sit in the Parliament without a constituency

It is suggested that the candidate for the Speakership should not be a leading member of the party He should be a colourless man He should be one who "knows nothing and whom nobody knows" He should be an obscure backbencher. Gladstone said in 1871 "It would not be wise or allowable to propose any candidate taken from the Treasury Benches ; upon these grounds especially, that it would be difficult, at any rate at present, to relieve any such persons from the suspicion of partiality , that precedent does not run in this direction , and that a resort to such a measure, in critical times, would not be without a tendency to lower the dignity of the chair by giving rise to a suspicion that the disposal of it had been made use of to serve the purpose of the Government" The Liberal Party put down its own point of view in these words in 1895 "A great desire had been expressed on both sides of the House that Mr Campbell-Bannerman who is universally popular should be nominated, but the Cabinet felt that there were great objections on principle to taking a principal member of their own body and placing him in the chair, thus making the speakership a purely party-appointment, a practice which has had such an evil result in the United States."

The qualities required of a Speaker are really not very high So great is the prestige of his office and so careful are all the parties to maintain his independence and authority, that any reasonable man can make a success of the office Lord Rosebury remarked thus on this point : "There is much exaggeration about the attainments requisite for a Speaker. All speakers are highly successful, all speakers are deeply regretted, and are generally announced to be irre-

placable. But a Speaker is soon found, and found out invariably, among the mediocrities of the House."

His Powers.

1. The Speaker does not possess very many powers. He is the President of the House of Commons and as such is entrusted with the duty of conducting the business of the House. It is he who recognises members and decides as to who will speak next When one member has finished his speech, no other member is allowed to speak unless the Speaker allows him to do so.

2. Whenever there is any controversy regarding any matter among the members it is the Speaker who gives the ruling According to a rule of 1604, "If any doubt arises upon a bill, the Speaker is to explain but not to sway the House with agreement or dispute." Whenever the precedents are not clear, the Speaker leaves the matter to the House. But the ordinary interpretation of the rules and customs of the House is the function of the Speaker himself and he does not allow debate or criticism of his decision except on a formal motion If a member raises a point of order, the Speaker has to give his decision. He may permit questions to elucidate the point but he allows no discussion

3. Ordinarily, the Speaker does no exercise his right of vote It is only when the House is equally divided that the Speaker exercises his casting vote He does not participate in the discussions His function is merely to conduct the proceedings impartially His greatest virtue is that he should not open his mouth, although his name is the Speaker.

4. The Parliament Act of 1911 has added to the powers of the Speaker. According to this Act, it is the Speaker who is to certify whether a particular bill is a money bill or not. It is his discretion which decides as to whether a bill is an ordinary bill or a money bill When we keep in mind the fact that the House of Lords has no control over the money bills and when a bill is declared to be a money bill, that takes away the control of the House of Lords, it becomes clear that the power of certification given to the Speaker is very important. A bill may be a money bill or not, but

if the Speaker certifies that it is a money bill, it becomes a money bill Theoretically speaking, an objection may be raised to this power of the Speaker But the impartiality with which the speakers have been carrying on their job, need not create any fears The Speaker is so honourable a person that he will not declare a particular bill to be a money bill simply for the sake of pleasing a particular party Moreover, the Speaker always acts according to the precedents set up by his predecessors Hence there is no ground for any fears

5. The Act of 1911 also provides that in the case of ordinary bills which have been passed by the House of Commons in three sessions, it is the Speaker who has to recommend as to which changes or alterations on the ground of the lapse of one year have become necessary.

Dr Jenning sums up his remarks on the English Speaker in these words "It is impossible, however, to indicate by an enumeration of powers and immunities the prestige which the Speaker enjoys Psychological influences can never be adequately explained in writing Express rules, long customs, ancient ceremonial and deliberate policy combined to give him an actual authority which none of these alone could confer Tradition and deliberation combine to confer on the person who sits in the chair a dignity and authority which could hardly be surpassed."

Comparsion of English and American Speakers.

It is desirable to compare the Speaker of the House of Commons with the Speaker of the House of Representatives in the U S A Unlike the English Speaker, the Speaker of U S A is always a party-man He is elected on party-lines and always remains a party-man As a matter of fact, he occupies the same position in the House of Representatives as the Prime Minister of England does in the House of Commons. The American Speaker is the leader of the party in the House of Representatives Sometimes he leaves the chair to participate in the discussions He votes with his party He favours his party in every possible way In other words, he is absolutely a party-man As such, he does not enjoy the respect which the English Speaker enjoys. He is opposed at the time of the

general elections. There is not and could not be any convention regarding the re-election of the Speaker He does nothing to earn that privilege. Every time a new General Election takes place, there is the election of a new Speaker. The party that has a majority in the House of Representatives gets its nominee elected Unlike the English Speaker, the American Speaker gets no pension Before 1910, the American Speaker had the power to appoint all the members of the Committees of the House of Representatives That gave him almost dictatorial powers But the power was taken away in that year But in spite of that, the American Speaker exercises a tremendous influence in the House of Representatives

The things are different in India No convention is finally established in this country. The reason is that our country is passing through a transitional stage. We just won our battle of independence

In the case of the Central Assembly, V J. Patel followed the British practice Although he was elected on the Congress ticket, he started acting in an independent manner after his election He tried to act in an impartial manner The result was that on the occasion of the next General Elections he was returned unopposed to the Assembly and also re-elected as the Speaker unanimously. But this convention was violated by Sir Shanmukham Chetty Although he was a Congressite, he became the hench-man of Lord Wellingdon. Since he favoured the Government in every possible way, he was defeated in the next general elections

As regards the states, the Speakers have acted absolutely on the party-lines. Even after their elections, they take active part in the working of their party-politics They support their party-action and in return, their parties back them in the elections. Thus, it is clear that India on the whole is following at present the American or the French system and not the English practice. It is hoped that in the long run, the English system will be followed because of its inherent virtues.

☞Q. 59. Discuss the process of law-making in England ?

Ans. There are different kinds of bills and for each of them, the procedure differs Bills can be divided into two parts viz., public and private Public bills are those which affect the genernl interests and are concerned with all the people or a large portion of them ,Private bills are those which relate to the interests of some one locality or corporation, e.g., bills for the authorisation or extension of railway or permitting a municipality to buy a gas work.

Public Bills

Those public bills which are introduced by the ministry are known as the Government Bills But some public bills may be introduced by the private members also As a matter of fact, most of the public bills are introduced by the Government and only a little time is alloted for the discussion of the public bills introduced by the private members

Five Stages

1 As regards the Government bills, there are five definite stages through which the bill has to pass As regards introduction and first readings, it is purely formal. Either the sponsor of the bill may read out the bill or the clerk of the House may do the same It is only in the case of the most important bills that brief speeches are made by the mover and the opposer. Each is given only five minutes (ten minutes' rule).

2. After the first reading, the bill is printed and is ready for the second reading which is the most important stage It is to be noted that during the second reading, only the fundamentals or main principles of the bills are discussed. The Speakers are not allowed to discuss the various clauses of the bill. The object of this discussion is to find out as to what are the merits and demerits of the proposed legislation After the discussion, voting takes place If the bill is approved, it goes to the Committee stage It is to be noted that in the case of the Government Bills, there is no difficulty regarding the approval of its principles because the Government has a majority in the House of Commons. Hence, all Government Bills can safely pass through

the second reading. But that is not the case with the Public Bills introduced by the private members of the House. The rate of mortality is very high in the case of those bills. Unless the Government approves of the bill or is indifferent towards it, there is no hope of its passing

3 As regards the Committee stage, the bill is sent to a specific Committee for a thorough discussion Since the number of the members is small and its procedure is flexible, there is an atmosphere for cool and calm deliberation on the bill. Since the bill is in charge of the minister concerned and the Government has a majority of its own in the Committee, it can be seen that the committee sends the same report which is approved of by the minister-in-charge There is a complete overhauling of the bill in the Committee stage

4 If the bill is reported from the Committee without amendments, there is no report stage. But this seldom happens. But when amendments are made in the bill by the Committee, the bill is discussed clause by clause and further amendments suggested It was settled in 1920 that amendments in the report stage must be within the ground covered by the Commitee.

5 As regards the third reading, the bill is discussed clause by clause There is a thorough discussion. Voting may have to be resorted to dispose of every clause The Opposition does its best to point out the evils of the proposed legislation In this atmosphere, the whole bill is passed.

When the Bill is introduced in the House of Commons and passed by that House, it has to go to the House of Lords and pass through once again all the five stages Unless it is passed by both the Houses and signed by the King, it does not become an Act

The Parliament Act of 1911 has made some changes in the existing system Before the passage of that momentous legislation, both the Houses had equal powers But the new Act has stengthened the hands of the House of Commons in accordance with the change of the times It is provided that money bills can be introduced in the House of Commons When the House of Commons has approved of a money bill, it is to be sent

to the House of Lords one month before the end of the session. Whether the House of Lords approves of the money bill or not, it becomes law It is to be noted that money bills are discussed not in any small Commitee but in the Commitee of the Whole which consists of the whole of the House of Commons The only difference is that the Speaker does not preside over its meetings and the rules of procedure are relaxed to facilitate discussion

As regards the ordinary Public Bills, if a bill is passed by the House of Commons in three consecutive sessions and one year elapses between the second reading in the first session and the third reading in the third session, the bill is considered to have been passed whether the House of Lords approves of it or not. It is to be noted that although this extraordinary procedure was laid down in 1911, the Englishmen have resorted to it only in two or three occasions Ordinarily, the two Houses know how to adjust things. The matters are settled by a compromise.

Private Member Bills

As regards the Public Bills introduced by the private members, the Government fixes only a few days for them Sometimes the work of the Government may be so heavy that no time may be allotted for the same But ordinarily, the Government tries to accommodate the ordinary members Before the beginning of every session, the private members are allowed to send their bills to the House There is a sort of a lottery-system to find out the order in which the bills are to be introduced by the members in the House The person whose name comes first has the right to introduce the bill first of all. The same procedure is adopted for those whose names are second, third, etc , on the list What actually happens is that the number of bills is very large and the time, being short, most of the bills are left un-introduced. But these bills cannot be taken up in the next session Those are merely cancelled and a new list has to be prepared for the next session. It may happen that a person may send his bill for different sessions and he may not get any chance at all. It is to be noted that while the other procedure is the same for these bills as for the government bills, there is a great mortality of these bills in the second reading.

Private Bills

There is a special procedure for the passing of the private bills. As pointed out already, the object of a private bill may be to grant a pension or privilege to an individual But more frequently, its object is to empower a municipality or private corporation to build or extend a railway, construct a tramway, erect a gas plant, dig a canal, or engage in some other enterprise.

Every private bill has to go through the same five stages in both Houses as any ordinary public bill But before a private bill is introduced, certain preliminaries have to be performed A petition with the bill must be sent to the Private Bill Office of the Houses before the session commences, and the notice of the petition must be given in the Gazette and the local newspapers, to the treasury, Ministry of Health. and the other Government departments which might be interested in that bill The petitioner is required to prepare an estimate of the costs and deposit a certain portion as a guarantee.

The petition is examined by the officers of the House called the Examiners of Petitions for Private Bills Usually, the two Houses appoint the same officers The petitioners have to prove before the examiners that the Standing Orders have been complied with If the examiners' report is in the affirmative, the bill is ready for introduction in either House If not, the bill is refused to a Committee on Standing Orders If the omission is excuse, the bill is taken or introduced Otherwise, the bill is killed

By the time the session begins, a certain number of private bills are ready for introduction At a joint conference of the two Houses, it is decided as to in which order the bill is to be introduced.

As usual, the first reading is purely formal Thus, the bill goes for the second reading If passed, the bill goes to one of the Private Bill Committees, with or without instructions A Private Bill Committee in the House of Commons consists of 4 members but in the House of Lords, it consists of 5 members The number of the Private Bill Committees depends upon the volume of the business to be disposed of in

any particular session. As a rule, each Committee receives a considerable batch of bills. Since the inquiry in the Committee takes the character of a quasi-judicial proceeding, service on a Committee which is compulsory under the rules, is a heavy strain on the time and energy of the members They do not find any compensation in the form of personal distinction

If a bill is not opposed, it goes straight to the Committee on unopposed bills. This Committee examines the clauses of the bill and finally reports on the bill with or without amendments The House rarely rejects the Report of the Committee

If a bill is opposed by the parties concerned, and the petitioner insists on proceeding with the bill, the question is heard before the Court of Referees In the House of Lords, the question is heard before the Committee on Private Bills

The next proceeding takes place before one of the Private Bill Committees Here the procedure is entirely judicial and lawyers are employed to argue the case on both sides The first thing to be examined is the preamble which states the object of the bill If the Committee decides that the promoters of the bill have failed to prove the desirability of the object set forth, it reports against the bill and the bill is finished But if the Committee is satisfied with the preamble, the bill is examined clause by clause and evidence is recorded on every point The Committee has at its disposal the reports of the various department of the Government and sees to it that bill is not opposed to public policy The Committee also examines the Government officials After that, the Committee submits its report to the House It is to be noted that the House passes the bills in the same form in which those are reported by the Committees

Dr Ogg points out that the English system regarding the Private Bills is much superior to the American system No doubt, it burdens the members with a lot of exacting work, it economises the time of both Houses.

In American, French and German legislatures private bills are treated in the same way as the ordinary public bills Any member may introduce as many bills as he pleases. Those may

interfere with the consideration of other major public measures But there is no remedy against this waste of public time and energy.

Under the English system, private bills are kept entirely outside the realm of party-politics Ministers have no responsibility for them They do not take any part in them except when their own departments are concerned or their evidence is required. In the Parliament, the Conservative and the Labourites do not oppose each other on the question whether a particular railway will be allowed to extend its scope or not There is a careful, dispassionate and non-partisan examination of every project

But its great evil is that the method is expensive both for the promoters and opponents of the bills Fees are charged at all the stages of the bill Barristers and solicitors have to be paid huge sums of money The travelling expenses of the witnesses have to be incurred It is stated that Birmingham spent £ 44,750 in 1892 in promoting a single bill. Another defect is the neglect of the public interests. It is pointed out that "the public have no friend in this class of legislation." But on the whole, advantages out-balance the disadvantages and that is why the system goes on

Provisional Orders

The system of provisional orders has been resorted to with a view to avoid the great cost involved in the passing of the Private Bills In many cases, Parliament has granted to the administrative departments the authority to grant special powers to local bodies or private companies These "Orders" of the Government departments become effective either automatically without Parliamentary sanction or after being confirmed by Parliament

Persons or bodies desirous of getting a Provisional Order, send an application to the department concerned The latter holds an inquiry into the merits of the application and hears the petitioners and the opponents If the ministry decides that the permission be given, it issues an "order" A number of such "orders" are put in the form of a public bill and introduced by the minister concerned in Parliament. The bill goes through all the stages in both the Houses This new system is less expensive and consequently it is being resorted to.

☞ Q. 60 Explain the Committee-system in England.

Ans It is admitted on all hands that the work of legislation in modern times cannot be performed by Parliament all alone Different devices had to be found out to save the time of Parliament and the Committee-system is one of them.

The Committee-system enables the Parliament to dispose of more bills in a short time Since the spade work is finished in the Committee stage, the bill can be passed through the Houses easily. Because of the small size of the Committee, there is better atmosphere for a thorough discussion of the bill in the Committee. Moreover, the rules of procedure in the Committee are not so rigid as in the Houses and consequently there can be better discussion than in the open session of the House Since the proceedings of the Committees are secret, the Government may be prepared to accept and incorporate the point of view of the Opposition.

1 There are five types of Committees in England. The first type consists of the Standing Committees on Public Bills These are five in number and one of them is concerned with the Scottish affairs. These Standing Committees are appointed at the beginning of every session and last for that session only The maximum number of members of a Standing Committee is 50 and 30 is minimum Each Committee is authorised to co-opt additional members whose number varies from 15 to 25 These additional members are those who are experts in the line or possess some special knowledge about the subject in question The Public Bills are sent to the various Committees concerned. The Committee of Selection nominates a panel of Chairmen consisting of 8 to 12 members Usually, the supporters of the Government are chosen as the Chairmen of the Standing Committees because they have a majority in each Committee

2 The House also appoints Select Committees to report on certain measures The number of Select Committees depends upon the number of the bills which require special examination. The work of a Select Committee is to collect and examine all the relevant material on the subject and submit its report on the same. A Select Committee consists of

about 15 members. The Select Committees are chosen by the Committee of Selection.

3 Sessional Committees are appointed for a session to deal with certain matters. Thus, a Sessional Comittee may be appointed to deal with the examination of petitions

4 There are also Private Bill Committees The number of these Commitees depends upon the volume of the private bills which have to be disposed of Sometimes, a Committee may be concerned with only one private bill but ordinarily, each Committee has to deal with many bills at a time In the House of Commons, a Private Bill Committee consists of 4 members but in the House of Lords of 5 These Committees deal with those private bills which are opposed Their work is a laborious one and although membership is compulsory, it is rarely cherished Membership of a Private Bill Committee involves a heavy drain on the time and energy of the members of the Parliament The members of the Committees are selected by the Committee of Selection out of a list prepared by the party-whips It is to be noted that it is these Committees on public bills which avoid the evil which is a common feature of American life. Public funds are not wasted on frivolous matters as is done in U S A

5. The Committee of the Whole House consists of all the members of the House of Commons The only difference is that the Speaker leaves the chair and his mace is removed. The Chairman of the Committee of the Whole is chosen at the beginning of each Parliament and it is he who conducts the proceedings of the Committee While the rules of procedure are very rigid in the House of Commons, that is not the case with this Committee. A member can speak as many times as he pleases The object of this relaxation of rules is to allow the members to discuss the budget thoroughly. It cannot be complained that a person did not get any chance to express his own views No closure motion is allowed in this Committee.

When the Committee of the Whole considers revenue measures, it is known as the Committee of Ways and Means When it discuses "appropriation" or expenditures, it is known as the Committee of Supply.

When the Committee of the Whole finishes its work, a motion is made that the Committee "rise and report". The result is that the Speaker comes back and the regular work of the House of Commons commences once again

It is desirable to explain the method by which the different Committees are selected. As regards the Committee of the Whole, it consists of all the members of the House of Commons and hence there is no necessity for any selection But in the case of other Committees, the members are selected by the Committee of Selection. This Committee of Selection consists of those members who are selected by the members of the House at the beginning of each session There is a conference between the leaders of the Opposition and the Government and they decide the composition of the Committee of Selection Since the Government has a mojority in the House of Commons, it will also have a majority in the Committee of Selection and also other Committees chosen by the latter The composition of this Committee reflects the party-strength in the House, but this rule may not be followed absolutely strictly.

☞ Q. 61 Write short notes on the following :— Closure, Kangarooo, Guillotine and Chiltern Hundreds

Ans Parliament is required to pass a large number of bills in every session There is too much rush of work The result is that many devices have been adopted to expedite the work in the Houses One of such devices is the "Closure"

Closure

The necessity for closure lies in the fact that the members *may unnecessarily waste the time of the House by giving lengthy* speeches In this way, the Government may not be able to get through the legislature all the bills required for implementing its programme Thus, the government may fail to fulfil its promises Hence different forms of closures have been adopted to put an end to the discussion on the bill.

When a debate is going on a bill, a member may move that "the question be now put to the vote of the House" There

is voting on this motion and if the motion is passed, the discussion on that bill ends But the Speaker has been given a lot of discretion in this matter. If he thinks that the Opposition has not got sufficient time to put forward its own point of view, he may allow the closure and thereby guard the right of the minority The result of this closure is that the discussion may be cut off at any time This may happen even when a member is speaking It is provided that at least 100 members of the House or 20 members of a Standing Committee must vote in support of the motion in order to make it valid

Kangaroo

Another form of closure is known as the Kangaroo When a very large number of amendments have been put forward and it is not possible to discuss all of them satisfactorily within the time prescribed, the Speaker is authorised to pick out those amendments for discussion which he considers to be relevant or substantial and omit the rest Thus, by this device, a lot of time of the House is saved But this method puts a great responsibility on the shoulders of the presiding officer and he can be expected to show impartiality in making his decisions.

Guillotine

The device of guillotine was adopted towards the end of the 19th century with a view to expedite the work of the House According to this, it is decided before-hand that all discussions on a particular bill must end on a particular day and at a particular hour. The result was whether the bill was discussed thoroughly or not, no further discussion could take place on that bill The object was to make it clear to the members that in case any time was wasted on anything frivolous, the result will be that they will be deprived of the opportunity to discuss all the aspects of the bill in question Experience, however, showed that when this device was adopted, more time was spent on the earlier parts of the bill and the latter parts received less attention Accordingly, a new device known as closure by compartments was adopted by which time was allotted for the different parts of the bill This improved form of guillotine has become a regular feature of the procedure of the House.

Chiltern Hundreds

There is a convention that once a person is elected a member of Parliament, he should not be allowed to resign. But certain devices have been found out to help a member to resign his seat The Parliament Act of 1705 in the reign of Anne provided that if a member of Parliament accepted a job under the Crown, he automatically ceased to be a member. The stewardship of the Chiltern Hundreds is a sinecure job under the Crown. Whenever a member wants to resign his seat, he applies to the King to be appointed to this sinecure job and his request is invariably granted The result is that the member loses his seat and a new election can take place for the vacant seat Another such job for which an application can be made is the Stewardship of the Manor of Northstead The object of the Chiltern Hundreds, etc., is to help a member to resign his seat in the House of Commons.

☞Q. 62. Write a critical note on delegated legislation in England.

Ans. The growth in volume and variety of delegaetd legislation is one of the outstanding problems of the British Constitution. Forced by the excessive pressure of business, the British Parliament has been obliged to delegate its powers of legislation to the various Government departments It only lays down the general principles in the Act and empowers the Executive to fill in the details The issuing of Orders-in-Council or Regulations to complete the outlines of Statutes is known as "Delegated Legislation"

No Statute of Parliament is so minutely detailed as to meet every possible case Parliament does not possess either the time or the competence to do that There is always a rush of work on the Parliament and the number of the bills to be passed in every session is getting larger and larger. Not only the number of laws is increasing, even the size of every bill is increasing. This can be illustrated by comparing the size of the Regulating Act of 1773 and the Government of India Act of 1935. Besides, the laws are becoming more and more technical every day The result of all this is that many member

of the parliament who come from the labouring classes and other occupations are not acquainted with the technicalities of the laws Hence the members of the Parliament are not qualified to give a right judgment over those laws which demand expert judgment.

As a result of this, the practice of passing Skeleton Bills through the Parliament has been developed In this way, the Parliament has come to delegate powers to ministers In 1927, forty-three Public Acts were passed and out of them 26 contained clauses empowering the ministers to issue Orders-in-Council, having the force of law

This delegated legislation is of three kinds :—(1) Provisional Orders are issued on requisitions by local bodies and they require confirmation by Statutes afterwards (2) Orders are issued under the authority of a clause and they are required to be laid on the table of the House for a stated number of days In some cases they do not come into effect until the stated days have passed. In others, they come into effect immediately on being laid on the table. These orders, if disapproved by a resolution of both Houses, are repealed But such a contingency never arises on account of the majority of the ministry in the Parliament. (3) There are Orders which are not required to be laid on the table but which automatically become law when issued by the minister. The House has theoretically the right to require the annullment of all these orders but in practice such refusal would involve the question of confidence in the Cabinet, and is thus a rare occurrence

The climax of this delegated legislation was reached in the Rating and Valuation Act of 1925, and on the occasion of economic collapse of the 1930's. The Rating Act not only empowered the minister to issue Orders-in-Council in the usual terms, but also provided that "any such orders might modify the provisions of this act, so for as may appear to the minister necessary or expedient for carrying the order into effect". In short, the executive by issuing orders could modify the Act itself This power can be compared to the Statute of Proclamations of 1609 On the occasion of the First World War, the British Cabinet of England was empowered to embark on the necessary economies, not by the usual Parliamentary procedure but by means of Orders-in-Council.

This development of the powers of the executive has been attacked by many people. There has been a tendency on the part of every minister and his staff to give more and more powers to the executive. The result of this has been the enormous increase of the powers of the bureaucracy with all the evils of the *red tape* It is contended that the growth of executive powers will hit at the liberty of the people and give an undue amount of control to the executive But the apologists maintain that whatever its shortcomings, delegated legislation has come to stay. Some suggestions are put forward to meet the arguments of those who want more powers to be given to the executive. It is suggested that it will be better to have advisory committees whose function will be to supervise the Orders-in-Council before they are enforced, or Committees of the House on the lines of the Private Bill Committees may be appointed to hold a sort of judicial enquiry on the orders, and then report to the House for confirmation of rejection In this way, the evils of delegated legislation can be remedied to some extent

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CHAPTER IV
THE JUDICIARY IN ENGLAND

Q. 63. Discuss the judicial system of England.

Ans The English judicial system is rightly famous for its fairness, impartiality, and incorruptibility It is the English system of law that has enabled the Englishmen to maintain their liberties The members of the bench have been persons of upright character and have not cared for the consequences in the performance of their duties There was a time when judges in England used to hold office during the pleasure of the King. But since the English resisted the exercise of the arbitrary power by the King, the judges, at present, holds office during their good behaviour Once appointed, the judges go on unless and until it can be proved that they are corrupt or physically unfit for their job. They can be removed only when an address is presented to that effect by both Houses of Parliament.

The judiciary in England has been able to attract the best type of people because the salaries paid to the judges are higher than those prevailing in Europe or America All judges are subject to the jurisdiction of the ordinary Courts for acts done in their official capacity.

Unlike U. S A, there is no system of judicial review in England When a law has been passed by Parliament, it is not the business of the English Courts to say whether that is good or not. That is purely the job of the legislature The latter alone has the right to decide as to what should be the law of the country The Parliament can change any law it pleases, and it is not the business of the Courts to declare whether that is equitable or not Their prejudices do not count They must carry out the law which is enacted by Parliament which represents the needs and aspirations of the people While the judges cannot declare any law *ultra vires*, the Parliament can change the law by a new enactment Thus, the Trade Disputes Act upset the decision of the Taff Vale case (1901) by which the trade unions were held responsible for the acts of their members Since that was found to be undesirable, the old law was changed

In France, there are two separate sets of Courts, viz, ordinary and administrative Courts. But that is not so in England where the ordinary Courts try all sorts of cases. This is one of the characteristics of the Rule of law which is peculiar to the English legal system

Another feature of the English Judicial system is the existence of the jury system The jury system represents a happy combination of experience, knowledge and common-sense. It has helped the Englishmen to safeguard their liberties. This has also helped the English to avoid the growth of too many technicalities in their judicial system

The English lawyers are divided into two parts Solicitors and Barristers. The former deal with the clients and prepare the cases, but the job of arguing the case is given to a Barrister This division of labour has added to the efficiency of the judicial system in England. The Indian system differs in this respect and is consequently defective

As regards the organisation of the judicial system, there are

two sets of Courts for criminal and civil cases. The criminal Courts are Justices of the Peace (J P), Magistrates, Quarter Sessions, Assizes, Court of Criminal Appeal and the House of Lords The civil courts are the County Courts, the High Court, the Court of Appeal, and the House of Lords Besides these, England has the Judicial Committee of the Privy Council which consists of the Lord Chancellor, ex-Lord Chancellors, Lords-of-Appeal-in-ordinary and Dominion judges It not only hears all the appeals in the ecclesiastical cases but is also the highest Court of Appeal of the British Empire Technically speaking, it merely advises the King but those are considered to be decisions as such

Criminal Courts

Justices of the Peace are the lowest Courts for criminal cases. J. P's are appointed by Lord Chancellor for life Their work is honorary and they try only petty cases. More serious cases are tried by a Court of petty sessions which consists of two Justices of the Peace In certain cases, trial is held by a jury The Stipendiary Magistrates who are appointed by the Home Secretary and are regularly paid for their work try both minor and serious cases.

Appeals from these Courts can be taken to the Courts of Quarter Sessions This Court consists of all the Justices of the Peace in the County. This Court exercises both original and appellate jurisdiction. Juries are employed in the trials.

Courts of Assizes try cases of perjury, libel, forgery and capital offences with the help of a Grand Jury of 12. These Courts are held by the judges of the King's Bench Division of the High Court who make rounds of the towns to hear criminal cases

Appeals can be taken to the Court of Criminal Appeal which consists of the Lord Chief Justice and the Judges of the King's Bench Division This court hears those cases of appeal in which the dispute is regarding a point of law and not a question of fact The decision of this court is final But in case the Attorney-General certifies that an important point of law is involved in a particular case, an appeal may be taken to the House of Lords But there is a usual tendency to discourage the taking of appeals to the House of Lords.

Civil Courts

The County Courts are the lowest courts in civil cases A County Court has jurisdiction in a district. There are about 500 county courts.

Appeals can be taken to the High Courts of Justice which is the lower branch of the Supreme Court of Judicature It nas both original and appellate jurisdiction It sits in three Divisions the King's Bench Division, the Chancery Division, and the Probate Divorce and Admiralty Division. The King's Bench Division tries both civil and criminal cases.

The higher Court is the Courts of Appeal which is the upper Chamber of the Supreme Court of Judicature. It consists of the Lord Chanceller, the Master of the Rolls, 8 Lord Justices of Appeal, and Presidents of the three Divisions of the High Court This court hears cases of appeal in all civil cases.

As in criminal cases, the House of Lords is the highest Court of Appeal in civil cases also But an appeal can be taken only on the recommendations of the Attorney-General regarding the seriousness of the case. It is true that when the House of Lords sits as the highest Court of Appeal, every peer has a right to participate in the discussions. But the convention has grown that it is only the Lord Chancellor and the seven Lords of Appeal is ordinary (or Law-Lords) who sit there and nobody else These persons are appointed for their highest judicial qualifications

The English judicial system has won the admiration of all the observers.

Q. 64. What is the position of the Judicial Committee of the Privy Council ?

Ans According to the Judicial Committee Act, 1833, the Privy Council hears appeals from the Ecclesiastical Courts of the United Kingdom and the Courts of the Channel Islands It is the highest Court of Appeal for the colonies and the dependencies. It consists of practically the same Judges as hear appeals in the House of Lords

Although the personnel of the Privy Council includes most

of the Law-Lords who hear the appeals in the House of Lords, the procedure in the two courts varies. The Judicial Committee does not give judgments It merely advises the Crown to give a judgment in a particular way The House of Lords gives regular judgments Moreover, in the case of House of Lords, the decision is technically by voting The majority decision prevails But the minority opinions also are given. In the case of the Privy Council, only one opinion is given and the minority opinions are not mentioned The House of Lords is bound by its previous decisions and a bad decision can be superseded only by legislation In the case of the Privy Council, it is not bound by its previous precedents But it is with great reluctance that it differs from its previous decisions

The right of the Privy Council to hear appeals from all parts of the British Empire is of very great importance. It is the bond of unity. According to Lord Rosebury, it is "the golden link of the Empire"

But the Statute of Westminster, 1931, gave the Dominions the right to abolish the right of appeal to the Privy Council In the case of **British Coal Corporation and others V The King**(1935), it was held by the Privy Council that the Canadian Parliament could validly abolish the right of appeal to Privy Council as the right to grant special leave depended upon the Judicial Committee Acts which were Imperial Acts and which could be repealed by the Dominion Parliament after the passing of the Statute of Westminster in 1931 In the same way, in the case of **Attorney-General of Ontario V. Attorney-General of Canada** (1947), it was held by the Privy Council that every Dominion could set up its own Supreme Court and abolish appeals to the Privy Council, both in civil and criminal cases Thus, the Privy Council signed its own death warrant. Thus, in 1933, Canada abolished appeals in criminal cases and in 1939 in civil cases The same was done in India before India became an independent Sovereign Republic on 26th January, 1950.

CHAPTER V
PARTY SYSTEM

☞ **Q 65 Discuss the party-system in England.**

Ans. The successful work of the democratic institutions demands the existence of an organised Party-system, and the history of England shows that the growth of the Party-system and democratic Government have gone hand in hand The origin of the English parties may be traced to the days of Elizabeth (1558-1603) when the Puritans excited themselves to gain seats in Parliament and thereby check the grant of monopolies during Stuart period. The Cavaliers supported Charles I and the Roundheads backed the Parliament in its fight against the King In the reign of Charles II, the names Tory and Whig came to be employed The former supported the royal prerogatives and the latter opposed the same It was during the 19th century that the Tories were changed into the Conservatives and Whigs came to be known as Liberals. The origin of the Labour Party may be traced to 189) when the Trade Union Congress instructed its Parliamentary Committee to invite all co-operative, socialistic, Trade Union and other organisation to do all that they could to secure the return of as many members as they could. The Labour party has become stronger and stronger. Although it got a set-back in 1931 when its leader, Ramsay Macdonald formed the National Government without the cousultation of the Party-chiefs, the Labour Party secured the majority once again in the elections of 1945

The object of party-organisation is to carry out the functions and policy of the Goverment. Those functions are to be put before the public the programme of the party, through the press, platform, the radio and the publication of relevant literature on the subject Parties issue election-manifestoes, convass support for their candidates, carry the voters to the polling stations, and to keep the members and the voters in touch through the party-organisations. Parties must carry out their programme when they happen to come to power

All the parties have a similar organisation and that may be described in this way. Each party has a local Committee in each Parliamentary constituency. It is the basis of the

whole-party-organisation. The local committees work in collaboration with the Central Office and also with the member of Parliament from that constituency on the party ticket

The parliamentary party consists of all the members of Parliament who are returned on the party ticket Thus each party has a parliamentary party of its own Each Parliament has its own leader and the Chief Whip Formerly, the members of Parliament enjoyed a lot of discretion in the matter of voting in Parliament But at present, party organisation has become so very rigid that it is not possible at all for any member to go against the decision of the parliamentary party The leader can be sure of his following The Whigs can see to it that the members do support the party measures So far as Liberals and Conservatives are concerned, their parliamentary parties can formulate their policies for Parliament and also for the country side.

Each party has also a national organisation The Liberal party has the National Federation The Conservatives have the National Union of Conservative and Unionist Association The Labour Party has the Annual Conference On the occasion of the annual meetings of these national organisations, the members review their past-work and prepare a programme for the future Members suggest ways and means to strengthen the hands of their respective parties

Each party has its Central Office which is rightly called nerve centre of the party It is the keystone of the whole party It has its paid staff in London, working under the directions of an important member of Parliament from the party "The Central Office now-a-days helps to establish new local associations where they are needed, aids and encourages associations where be set with special difficulties, prepares suggestions and instructions for local party committees and workers, distributes literature, raises money, provides popular significance, and other ways keep the local organisation active and the whole party-mechanism upto the level of efficiency required in a country where relations may come almost without warning. The office also compiles lists of persons who would make acceptable candidates for parliamentary seats and not only advises organisations in the constituencies

upon the choice of the candidates, but stand ready to fit out a needy or embarrassed constituency with a candidate for some other part of the country, and, if necessary to see that such a candidate is supported with speakers and funds".

Conservative Party

Each party has its own programme. The Conservative party stands for the protection of property and the maintenance of the British Empire under the Crown". They regard the present social order based on private ownership as "organically sound". They stand for reforms to remove the evils of the system but the system is to be maintained in tact. They do not stand for economic equality. They are the advocates of protection and imperial preference. They stand for the Church of England, House of Lords and the Crown. Since they are not prepared to liquidate their Empire, they do not approve of the Labour policy to grant India independence. Their present leader, Churchill, was the arch-enemy of India's freedom The rank and file of this party come from the landed aristocracy and the commercial and industrial interests. The Labour party is at present His Majesty's Opposition.

The Labour Party is the most progressive of all the parties. It stands for a complete reorganisation of the social and political life of the country Its programme includes the elimination of private property, nationalisation of all means of production such as land, mining and manufacturing industries, transport and other power, adequate wages of workers, insurance against unemployment and old age, free medical aid and education, progressive taxation to secure an equitable distribution of wealth, abolition of all class-privileges and distinctions and securing the opportunity for all. Although its foreign policy does not materially differ from the Conservatives, its attitude towards dependencies is more liberal. It was the Labour Government which has evacuated its troops from Egypt. The same Government pledged itself to leave India by June, 1948 and sent a new Viceroy to carry out the same policy. The bulk of the members of this party come from the trade unions, cooperative organisations, working classes and also the intellectual classes Party funds come from the voluntary contributions of the members. It is led by men who have risen from humble positions in life

The Liberal party is going into the background. Although it used to be the strongest party even during the 20th century, it has lost the following in recent years Those who are radicals have joined the Labour Party and those who are less progressive are joining the ranks of the Conservatives. The party got only 11 seats in 1945 It is led by Sir William Beveridge It stands for free trade, private enterprise and social reform It "urges state regulation rather than nationalisation or state management, though it wishes the Government to control banks, investments, transport and electric power and to regulate the coal industry Its agricultural policy is to secure a more efficient use of land through the provision of small holdings and allotments The "liberal way" is in essence a middle way between the "State Capitalism of the Conservatives and the socialism of Labour". (Buell). The party has its following among the professional and commercial classes, farmers and middle class. The Liberal party is on the decline

Besides the three main parties, there are the Independent Labour Party and the Communist Party The former consists of the radical labourites and stands for expediting the advent of socialism in the country The Communist Party is a branch of the Communist International It does not enjoy a strong following Its programme is to abolish capitalism and establish a Communistic Society

CHAPTER VI
LOCAL GOVERNMENT

☞Q. 66 Explain the system of Local Government in England

Ans The first thing to be noticed about the English system of local government is that it is deeply rooted in the past. Unlike the French system which might be called the handi-work of Napoleon, the English system has been going on from the times of the Anglo-Saxons There is no doubt that a few minor changes had to be made to adapt the system to the new circumstances, but the system remains the same in its fundamentals.

Moreover, the control of the Central Government over the units of local government is very little as compared with France. The Counties, districts, parishes and boroughs enjoy their autonomy and are not interfered with

Unlike France where the control is direct, the Central Government in England exercises some control in an indirect way The Central Government gives grants-in-aid to the local bodies and lays down the conditions under which those grants are to be spent by the local bodies When the body accepts a grant for a specific work, it automatically agrees to the conditions prescribed in connection with the grant. The Central Government also sends inspectors to find out as to how far the conditions of those grants have been carried out The accounts of the local bodies are audited to find out whether money has been spent on a particular thing or not It may be noted that while the Central Government may lay down the qualifications of the teachers to be employed by the local bodies, it cannot direct whether the plays of Shakespeare will be taught or those of G. B Shaw

Unlike France where the Minister of the Interior exercises complete control over all the local bodies in the country, in England this control is exercised partially by many departments This is done by the grants-in-aid which are given by the various departments to the local bodies on certain conditions.

While there is uniformity in the French system of local government, the English system allows the local units to have a lot of autonomy in their work The different local bodies were created at different times by the Acts of Parliament and consequently were bound to differ from one another Hence, there is a lot of scope for diversity and variety.

Its Organisation.

As regards the organisation of local government in England, the following are the units counties, districts, parishes and boroughs. The largest unit of the local government is the county and there are two kinds of them historic and administrative counties The historic counties are 52 in number They can be traced back to the Anglo-Saxon period But they are no longer the units of local government

The administrative counties were created in 1888 There are 62 administrative counties in England and Wales and 83 county boroughs Each county has a Council consisting of a Chairman, Aldermen and Councillors The size of a County-Council depends upon its population. The average membership is about 75, although it varies from 28 to 140. The Councillors are elected for a period of three years. Aldermen

are elected by the Councillors and their number is one-third of the total number of the Councillors. The Aldermen hold office for 6 years, and one-half of them retire after every three years The Chairman is elected by the Council for one year only He is also the *ex-officio* Justice of the Peace during his term of office. All the urban areas with a population of more than 75,000 are traced as counties. Towns with less population are included in the administrative counties

The following are the functions of the County-Council —

1 Supervision of the work of other local bodies within the county

2 Preparation of the county budget and levying of the local rates.

3 Management of sanitation, public health, drainage, water-supply, asylums, hospitals for infectious diseases.

4 Licensing of places for amusements such as dancing and music halls

5 Maintenance of industrial schools and other educational institutions within the county

6 Making and maintenance of roads and bridges and the provision or housing accommodation for the labouring classes

7. Registration of births, deaths and marriages

8 Administration of the Poor Law with the help of the Police Assistance Committees.

Most of the work of the County-Council is done through the Committees and the most important of them are concerned with finance, public health, education etc The Town Clerk is the chief officer of the County and the other officials are the Medical Officer of Health, Treasurer, Educational Officer and Inspector of Nuisances

The Districts are of two kinds . urban and rural. An Urban District has a population of more than 3000 and includes all those small towns which are without any municipal or borough charter A Rural District generally has a population of less than 3000 and includes a number of parishes Both the urban and rural districts are governed by the Local Government Act, 1894 Each District has an elected Council and manage its affairs The size of a District Council varies Each parish with a population of more than 300 persons is entitled to send one member to the Council. The life of District Council is three years and one-third of its members retire every year.

The Urban District Councils deal with elementary education, old-age pensions, public health and unemployment The Rural District Councils are mostly concerned with Public Health They have to provide for hospitals, drainage system, water-supply, housing-accommodation, markets, street-lighting and the relief of the poor

A parish is the unit of local government in England. Every village with a population of more than 300 persons has a Parish Council The smaller villages meet once a year and transact their business there The size of a Parish Council varies from 5 to 15 according to its population. Its tenure is three years. It has an honorary clerk and an honorary treasurer. Its functions are street-lighting, provisions of children's play-grounds construction and maintenance of footpaths, and the provision of public libraries and wash-houses.

The importance of Boroughs in England lies in the fact that about 80 per cent of the English population lives in the towns or boroughs The boroughs are of two kinds · municipal-boroughs and county-boroughs County-boroughs are those towns which have a population of more than 75 000 The county-boroughs have an administration similar to that of counties and are independent of any control of the County-Council. But that is not the case with the smaller boroughs or towns

All authority in a Borough is in the hands of the Councillors, Aldermen and a Mayor The Councillors are elected for three years and one-third of them retire every year The number of Aldermen is one third of the total membership of the Borough Council The Aldermen and the Councillors sitting together elect every year a Chairman known as the Mayor The number of the Councillors depends upon the size of a borough.

Most of the work of a borough council is done by the Committees and the permanent staff. The important officials are the Town Clerk, Treasurer, Medical Officer of Health, Town Engineer and an Inspector of Nuisances

The following are the functions of a Borough Council .—

1 Recruitment and maintenance of efficient police-force.

2 Making of the necessary arrangements for public health

3 Making of adequate arrangements for the education of the people in the town

4. Provision of facilities like baths, and wash-houses, free libraries, museums, parks and play-grounds.

5. Undertaking of municipal trading such as municipal markets, tram-ways, bus-services, electric-supply and gas-works

For purposes of local government, there are three Londons the City of London, Administrative County of london and the Metropolitan London The Metropolitan London covers an area of 700 sq miles and its work is purely that of police The City of London occupies an area of one square mile and it is governed by Lord Mayor and three Councils. Those three Councils are the Court of Aldermen, the Court of Common Council, and the Court of Common Hall Lord Mayor is an interesting personage He is given a salary of £ 10,000 a year, but he spends the whole of it in the discharge of his duties Every year, he gives a dinner at the Guild Hall He occupies a high place in British public life, particularly on ceremonial occasions, making of a national appeal, and the entertainment of royalty and the foreign Kings The Administrative County of London consists of a Council of 124 Councillors and 20 Aldermen chosen for 6 years by the Councillors

☞ Q 67 Explain the main provisions of the Statute of Westminster What is the constitutional position of the Dominions under it ?

Ans. The Statute of Westminster is a great landmark in the history of the relations between the mother-country and the colonies It put in a legal from the position of the Dominions which had undergone a great change as a result of the development of innumerable conventions. The Statute contains a preamble and 12 clauses In the preamble, it explained the constitutional position of the Dominions with respect s Great Britain It says that the Crown is the symbol of unity of the free association of the members of the British Commonwealth of Nations. It lays down that if any change is to be made in the succession to the throne, or the royal style and titles, the consent not only of the Parliament of Great Britain, but also of the Legislatures of the Dominions, is to be secured before any change is actually effected

Section 1 defines the position of the dominions in these words · "They are autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations"

Section 3 enables Dominion Parliaments to make laws having extra-territorial operation It emphasises the fact that the dominions can make laws which affect not only their internal politics, but which influence things which are outside their immediate boundaries The Imperial Parliament has no right to make laws for them even in this sphere

Sections 5 and 6 are explanatory only. But sections 7, 8 and 9 are of great constitutional importance because they put down in definite terms as to how much control is to be exercised by the mother country over Canada, South Africa, Australia and Newzealand Section 8 still leaves the power of amending the Canadian constitution with the British Parliament Section 9 says that no change will be made in the method of the amendment of the constitution of Australia and Newzealand Section 9 lays down that if an Act is passed by the British Parliament which concerns only the States of Australia, the consent of the Government of the Commonwealth of Australia will not be required Other sections are not of very great importance

(B) The Statute of Westminster puts on a legal basis the position occupied by the Dominions in the British Commonwealth of Nations It says that the Dominions are not in any way subordinate in the British Government or to one another In other words, they are equal in every respect None is above the other. The only thing which combines them is the common allegiance to the Crown Even in the matter of change of law of succession, the consent of the Dominion Parliaments has to be taken We knew how when George VI was coronated, he specifically mentioned the names of the Dominions and promised to abide by their laws Moreover, he did not legally become the King of the Dominions unless and until an Act was passed in the Dominions accepting him as their King Probably, the reason why Edward VIII had to abdicate was because the Dominions refused to accept him and there was the danger of the disruption of the British Empire

Legislative Independence.

The Dominions enjoy complete independence in the matter of legislation They can pass any law they please Their law does not become invalid because it is repugnant to any law passed by the British Parliament Likewise, no law passed by the British Parliament is applicable to the Dominions. How-

ever, a Dominion or Dominions might request the mother-country to pass a particular law for them But even when a law has been passed by the British Parliament, it does not *ipso facto* become applicable to the Dominions After the law has been passed by the British Parliament, it has to be passed once again by the dominion legislature to become a part of the law of that dominion

Executive Independence

Not only are the dominions independent in matters of legislation, the mother-country does not exercise any executive control over them Until 1926, the Governor-General was an appointee of the British Government But according to the Balfour Report of that year, the Governor-General is appointed by the King, not with the consent of the English Ministers, but with the advice and consent of the Dominion ministers. It follows that only that man will be appointed as the Governor-General of a Dominion, whose appointment is approved of by the Dominion, in advance Each dominion is represented by a High Commissioner in London and since 1928, British High Commissioners have also been appointed in the Dominions

Judicial Independence

The Dominions enjoy almost complete control in the judicial field It is only to the Judicial Committee of the Privy-Council that they used to send their appeals from their High Courts At one time, the British Government exercised a lot of control through this method But this control of the mother-country is also losing its significance. The reason is that the dominions have come to regard the taking of appeals to London as a sign of inferiority and consequently they would like to end it or reduce it as much as possible. Appeals can be taken from Australia if the High Court of Australia allows the appeals to be taken. There are certain conditions imposed on the right of taking appeals Similarly, very few appeals come to London from South Africa It is only from Canada that the largest number of appeals came to the Privy-Council. This machinery was used very often by the Canadians and the judgments given by the Privy-Council were of great importance in the matter of the interpretation of the Constitution of Canada.

International Relations.

The dominions are given a large measure of altitude in their international relations. All dominions are free to send their own ministers to foreign countries and receive those of other countries. They are given the right to make separate treaties of their own. As early as 1922, Canada asserted her claim to separate treaty-making authority and actually concluded one with U. S A. The treaty was not signed by the British representatives but by the Canadian representatives. All Dominions can make any treaty they please. The Home Government can have no objection to it. Similarly, the Dominions are given the right to join or not the war in which England is involved. The Dominions are not bound to joint a war which has been started by British on their own initiative We remember how on the occasion of the Imperial Conference held in 1937 in London, both King Mackenzie, the Prime Minister of Canada, and Hertzog, the Premier of South-Africa, made it very plain that were not bound to fight for Britain if she was involved in a war. There is no doubt that Canada, Australia, Newzealand and South Africa joined the War, but they joined not because they were forced by the mother-country, but because their own interests demanded that The Declaration of Neutrality by the Irish Free State in the World War II is a proof positive of the liberty of the dominions to join a war or not.

The Dominions were given separate seats in the League of Nations and U. N O and were authorised to vote any way they pleased. We know that at many occasions the representatives from Ireland and Canada even voted against British Government. It shows that they enjoyed liberty of action in the League and now do the same in the U. N.

It is clear from above that the dominions are practically independent. They are not under Great Britain in any way. They do what they please. They recognize the King of England as their interests demand it. Any day they can repudiate him and become independent.

The Swiss Constitution

Q. 1. What are the characteristics of the Swiss Constitution ?

Ans. The first characteristic of the Swiss Constitution is that it is a written Constitution which is to be found in the document of 1848 as amended in 1874 Many other amendments of the Constitution have taken place since 1874 and those are parts of the Constitution. Although the size of Switzerland is much less than that of U S. A , the Swiss Constitution is twice as long as the Constitution of the United States The reason is that the Swiss Constitution contains many unnecessary details about the Government The written Constitution of Switzerland has certain customs and usages. For example, the Federal Government has the right to determine the conditions under which the aliens can be naturalized in the cantons, but this right was not being exercised by the Federal Government and consequently, each canton has its own rules of naturalization. The result is that an alien who gets himself made a citizen of a canton, also becomes a citizen of Switzerland

2. The Constitution of Switzerland is rigid. The method of amendment is certainly not rigid as that of the U. S. A. but it is certainly very easy. It is to be noted that the people play a very important part in the method of amendment of the Constitution.

☞ Chapter III of the Constitution deals with the method of amendment of the Swiss Constitution A distinction is made between total and partial revision of the Constitution, but that has no practical importance The total revision took place in 1874 If both the Houses of the federal legislature agree upon a total revision by a separate resolution, the agreed revision is referred to the people for their approval The amendment becomes valid if it is approved by a majority of the voters in a majority of the Cantons If one House of the Legislature passes a resolution for the total revision of

the Constitution and the other House does not agree or if fifty thousand Swiss voters demand a total revision, the question is referred to the people to ascertain whether they are in favour of the total revision or not. If the verdict of the people is in the affirmative, both the Houses of the federal legislature are re-elected for the purpose of undertaking the revision

As regards the partial revision of the Constitution, there are two methods of amending it If both Houses of Legislature agree on a particular amendment, it must be submitted to the voters and becomes law if it is approved by a majority of voters in the majority of cantons Secondly, if fifty thousand citizens desire a particular amendment, they may send the proposal in general terms or in the form of a bill complete in all details, by means of an initiative petition When an initiative petition is made in the form of a bill completed in all its details, the federal legislature has to submit the same for the approval of the people and the cantons. If the legislature does not approve of the bill, it may frame a bill of its own or recommend to the people the rejection of the bill proposed The legislature has to submit the bill or its proposal for rejection of the bill initiated by the people along with the bill initiated by the people In order to become law, the bill is initiated by the people, must be accepted by a mjaority of the voters in a majority of the cantons

3 Another characteristic of the Constitution is the supremacy of the Federal Constitution It is true that the Swiss Federal Tribunal possesses the power of judicial review If any law of a canton or any administrative Act of a canton conflicts with the Swiss Constitution, it can declare it as *ultra vires*. But it cannot declare any law passed by the Federal Legislature as ultra vires Like the British Constitution, the Swiss Constitution is based on the theory of the sovereignty of the legislature and consequently no Court can sit on judgment over the federal legislation

4. The Swiss Constitution is essentially democratic. It has been rightly stated that Switzerland is the political laboratory of the world where experiments in direct democracy have been successfully tried It is in this country that we find the institutions of initiative and referendum working in all their vigour. The Swiss Constitution was adopted by

the people by their direct vote and can be amended only by the direct vote of the people In some cantons, the primary assemblies of all the adult citizens still act as legislative bodies The Constitution has abolished all aristocratic and oligarchic privileges It recognises the equality of all citizens before law and gives the right of vote to all men of age

5 Another feature of the Swiss Constitution is liberalism It is true that the Swiss Constitution does not contain a separate bill of rights, but there are many Articles of the Constitution which deal with the liberties of the citizens According to the Constitution, every citizen has the right to vote All citizens are equal before the law All citizens are guaranteed the freedom of the Press and freedom of association Every citizen of a Swiss Canton is a citizen of the Swiss Federation The people have the right of petition Article 49 guarantees the liberty of conscience and creed but this freedom must be compatible with public order and morality The Jasuits are not allowed to work within Switzerland The founding of new religious orders is forbidden by law Every citizen is protected against abuses

6 Another feature of the Swiss Constitution is the plural executive in the country The Federal Council is the Federal Executive It consists of 7 members who are elected by the federal legislature They have no joint responsibility and do not owe any loyalty to the chief These ministers are very often re-elected and thus form the permanent executive.

7. In spite of religious and linguistic differences, the people of Switzerland work in harmony and co-operation The four official languages of Switzerland are German, French, Italian and Romansh. The two main religions are Protestantism and Roman Catholicism Protestants are about 57 per cent, Catholics about 41 per cent. and Jews are about 0 5 per cent According to Buell, Switzerland "has demonstrated the possibility of close co-operation between peoples who at one time were independent of each other politically and today are widely divided by language and religion"

8 The Swiss Constitution is federal in character. Although the word "confederation" is used in the Constitution, Switzerland is really a federation. The Swiss Constitution is a grant of powers and hence follows the model of Australia and

the U. S. A. and not Canada. Swiss Federation consists of 19 full cantons and 6 half-Cantons All cantons have the same type of Government The only difference between the Cantons and half-Cantons is that while sub cantons can send one representative each to the Council of States, the full cantons send two each.

According to the division of powers between the Federal Government and the units, the Federal Government has been given certain specific powers which are under its exclusive control. At the same time, the Federal Government has been given certain concurrent powers. The residuary powers are with the states. "The cantons are sovereign so far as their sovereignty is not limited by the Federal Constitution ; and, as such, they exercise all the rights which are not delegated to the Federal power "

The Federal Government has exclusive jurisdiction in the following matters : the right to declare war and conclude peace, and to make alliances and treaties with foreign states (subject to the conditions that the Constitution retains the right to conclude treaties with foreign states with the consent of the Federal Government concerning matters of public economy, Police and border relations), military instruction and arming of troops, policing of embankments and forests, utilisation of water-power, aerial navigation, custom duties, posts and telegraphs, roads and bridges, railways, coinage, issue of bank notes, weights and measures, manufacture and sale of gunpowder, regulation of commerce, etc. It has no right to levy direct taxes, but if the revenues of the Federal Government prove in-sufficient, it has the power to get money from the cantons according to their resources.

The concurrent powers of the Federal Government are with regard to civil and criminal law, regulation of fishing and hunting, regulation of industry and insurance, control of the press and encouragement of education "When the Federal Government exercises a concurrent power, its statutes prevail over those of a canton "

It is to be noted that there are certain restrictions on the exercise of their powers by the Federal Government,

and the cantons. As regards the restrictions on the Federal Government, no person can be compelled to become a member of any religious association, submit to any religious instructions, perform any act of religion or incur any penalties of any kind whatsoever by reason of his religious opinions No impediment to marriage can be imposed on grounds of religious belief, poverty of any party, or their conduct. The sentence of death is not to be pronounced for any political offence As regards restrictions on the authority of the cantons, no canton can expel from its territory any citizen of the canton or deprive him of his rights as a native or burgher. No canton is subject to any stamp duty or registration duty the documents of which are liable to federal stamp duty or which have been exempted therefrom No canton is to attack other cantons in the event of difference arising between the parties The cantons are also subject to three more restrictions The Constitution of each Canton must preserve the Republican form of Government Each must be subject to revision or amendment by popular vote. No Constitution of a canton should contain anything that is contrary to the Federal Constitution

The Swiss Federal system differs from the American system in certain matters. In Switzerland, the sphere of federal authority and that of the cantons are not separted into watertight compartments This is particularly so in the field of administration. In certain cases, the departments of Federal Government have been completely centralized and the Federal Government acts through its own officials. In certain other cases, the Federal Government acts through the machinery of the cantons Secondly, the Swiss cantons do not enjoy the same security which is enjoyed by the American States against the invasion on their powers by the federal legislature. The reason is that the Swiss Federal Tribunal has no jurisdiction in such a case The authority of the federal legislature cannot be challenged by it. In the third place, the Swiss Federation is stronger than the American Federation. It is her duty to protect the rights of the people. It guarantees the cantons their Constitution It guarantees them their territory and their sovereignty. But as in America,

there is a tendency in Switzerland also to increase the powers of the Federal Government The total revision of 1874 was the result of the tendency. The process of centralization has been at work ever since 1874 According to Shotwell, "Federal authority has been extended to such subjects as patents, water-power exploitation, the civil and criminal law, the alcoholic beverage traffic, aerial, maritime and surface transportation, banking and social hygiene, and the production and marketing of grain Federal ownership has been extended to nation's telephonic and wireless communication system and the railways. Many new sources of federal taxes have been created, and considerable number of federal subsidies to the cantons have been inaugurated. Combined with other factors, such as the growth of commerce and industry on the national scale, this augmentation of federal power has necessarily exalted the prestige and influence of the Government of the Confederation at the expense of the separate cantons" However, it is to be noted that a Bill which aimed at increasing the power of the Federal Government was rejected by the people in 1934.

☞Q. 2. What is the method of amendment of the Swiss Constitution ?

Ans. Please refer to the previous Question.

☞Q. 3. What is the nature of the Swiss Federal System ?

Ans. Please refer to Question No. 1.

☞Q. 4. Discuss the plural executive in Switzerland

Ans. The Federal Council is the plural executive of the Switzerland. It consists of 7 members who are elected for 4 years by the two chambers of the Federal Legislature in a joint session Ordinarily, these members hold office for 4 years, but their term finishes earlier if the federal legislature is dissolved earlier than 4 years. Such a thing seldom happens, but a possibility is always there. Ordinarily, the members

of the Federal Council re elected many times. Some members have held office as long as 32 years It is not necessary that the members of the Federal Council must be elected from members of the federal legislature, but ordinarily the members are elected from the Legislature. Not more than one member can be chosen from a single canton. By custom, the cantons of Berne and Zurich are always represented in the Federal Council Not more than 5 members are chosen from the German-speaking cantons.

Every year, the Federal Assembly of Switzerland elects a President and a Vice-President out of the 7 members of the Federal Council. But the President cannot be re-elected President or the Vice-President for the next year. There must be some interval By custom, the person who is the Vice-President in one year is usually elected President in the next year The result is that the office of the President passes by rotation among the members of the Federal Council It is to be noted that the President of the Federal Council is also the President of the Swiss Confederation Like other members of the Federal Conncil, he is incharge of a department of his own The President is merely a titular head of the Confederation. Apart from presiding over the meetings of the Federal Council, he has no authority over the other Councillors However, he has a casting vote in the case of a tie The Swiss President cannot he compared to the American President or the Prime Minister of England He does not select his colleagues and has no control over them He is merely the first among equals, *Primus Inter Pares* He is often described as "A President of no Great importance"

According to President Lowell, "He is simply the chairman of the Executive Committee of the Nation, and as such he tries to keep himself informed of what his colleagues are doing, and performs the ceremonial duties of the titular head of the State"

The powers of the Federal Council can be discussed under three heads. executive, legislative and judicial As regards the executive powers, Article 102 describes them as follows: enforcement of federal laws and ordinances, conduct of foreign affairs, preservation of internal secutity, the appoint-

ment of such federal officials as are not appointed by the Federal Assembly or any other authority, ensuring the safety of the Republic and maintenance of peace and security, supervision of the army and all its branches, administration of Federal Finances, supervision of all Federal Officials whether Civil or Military. The Federal Council has to prepare and submit to the federal legislature every year a report of its work in the field of domestic and foreign affairs The Federal Council has also to enforce the guarantee of Cantonal Constitutions It examines the treaties made by the cantons among themselves or with the neighbouring states. It has to restore order in case of any disturbance in a canton.

As regards legislative functions, the members of the Federal Council are responsible for the initiation of most of the important laws into the legislature It is true that the members of the Federal Council are not the members of the legislature As a matter of fact, if they are members of the legislature at the time of their election to the Federal Council, they must resign their seats. But this does not mean that they have no say in the affairs of the legislature. The members of the federal legislature have the right to sit in both Houses of the federal legislature. It is true that they do not have the right to vote, but they have the right to speak and also the right to table motions on the subject under consideration. They are subject to interpellations in either House They have the right to introduce bills into the legislature "As a matter of fact, most of the important measures of federal legislation, including the budget are drawn by the Federal Council, either upon its own motion or upon request by the Houses." According to Lord Bryce, "It is a guide as well as an instrument, as often suggests as well as drafts" it is to be noted that the measures which are sponsored by the Federal Council are seldom substantially amended or rejected by the legislature.

As regards the judicial powers of the Federal Council, originally it served as the Chief Administrative Court of the State. But after the creation of an Administrative Court in 1928, the Federal Council has lost much of its judicial powers.

The Swiss executive is in the hands of a commission and

not of an individual. Although the Federal Council has collective duties, it cannot be called a Cabinet It has neither the solidarity nor the homogeneity of a Cabinet The members are elected on the basis of their personal merit and not on account of their party affiliations The Federal Council is not the mirror of the party-strength in the legislature. The practice is that the same persons are re-elected members of the Federal Council many a time. Their parties may be liquidated, but they still continue. It all depends upon their integrity of character and reputation as good administrators

There are occasions when the members of the Federal Council differ from one another. They even go to the length of opposing one another in the open sessions of the legislature There can be occasions when their policy may not be approved of by the legislature There may be violent criticism of the policies But this does not mean that they can dissolve the legislature and appeal to the country against the legislature They should never forget that they are merely the creatures of the legislature and as such it is their duty to obey the legislature. The legislature lays down the general policy which must be carried out by the Federal Council. They have no say in this matter "The Swiss Federal Councillor is like a lawyer or an architect in that his advice is sought and usually heeded , but he is not supposed to throw his job in a hurry whenever his employer insists on having something done differently" Again, "If they (members of the Federal Council) find themselves outvoted in any matter, they do not resign as in England or France , they merely pocket their pride and obey the will of the legislative bodies with as good grace as they can muster." It is true that a Councillor may resign if he thinks that he is insulted or that his policy has not been accepted, but there is nothing to force his resignation. In 1934, the bill for the protection of public order was rejected. Haeberline was the author of this bill and he resigned because his bill was rejected As has already been pointed out, the bills introduced by the members of the Federal Council are rarely rejected. These members are seasoned politicians and they command a lot of influence with the legislature and thus manage to get their

bills passed

The Swiss executive is partly parliamentary and partly non-parliamentary It is parliamentary because its members are chosen by the legislature out of its members Its members have the right to sit in the legislature and take part in its proceedings They have to answer questions in the legislature They can be criticised by the legislature They have to carry out the will of the legislature. But their responsibility differs from that of the ministers of a country like England. They do not resign if they are criticised or censured In such a case, all that is required of them is to readjust their bills or their policies according to the wishes of the legislature The Swiss executive is non-parliamentary because its members are not the members of the legislature. If they are members of the legislature at the time of their election to the Federal Council, they must resign their seats They sit in the legislature, but do not have the right to vote Their term of office is fixed The legislature can criticise them, but not dismiss them The members of the Federal Council need not belong to the majority party in the legislature

According to Lord Bryce, "In no other modern Republic is executive power entrusted to a Council instead of to a man and in no other free country has the working executive so little to do with party politics The Council is not Cabinet like that of British .... for it does not lead the legislature and is not displaceable thereby Neither is it independent of the legislature like the executive of the United States ..and though it has some of the features common to both, those schemes differ from both in having no distinctively partisan character. It stands outside party, is not chosen to do party work, does not determine party politics, yet it is not wholly without some party colour." To quote Lord Bryce again, "It provides a body which is able not only to influence and advise the ruling Assembly without lessening its responsibility to the citizens, but which, because it is non-partisan, can mediate, should not arise, between contending parties, adjusting difficulties and arranging compromises in a spirit of conciliation. It enables proved administrative talent to

be kept in the service of the nation, irrespective of the personal opinion of the Councillors upon the particular issues which may for the moment divide parties ... It secures continuity of executive policy and secures for a plural executive the merits of a unified executive."

Q 5 "A system of government which falls in a class by itself, which differs from the Presidential and the Cabinet types, but which combines certain features of both, is that of Switzerland" Discuss

Ans. See the answer to the previous Question

Q 6 "The Federal Council is one of the institutions of Switzerland that best deserves study" Discuss.

Ans Please consult the answer to Question 4

Q 7. Explain the peculiarities of the Federal executive in Switzerland

Ans. Please consult the answer to Question 4

☞ **Q 8. Explain the working of the Swiss Legislature**

Ans. Switzerland has a bicameral system. Its federal legislature is known as Federal Assembly It consists of two chambers : Council of States and the National Council.

The Council of States is the upper chamber It represents not the people but the units of the Federation It corresponds to the Council of States in India and the Senate in U. S A. and Canada. The principle of equal representation of the units has been followed. Every full canton sends two representatives to the Council of States Every half-canton sends one member There is no federal law regarding the method of election of the members of the Council of State their tenure of office. Each canton is given absolute discret

in this matter. In 21 cantons, the members are elected by the people. In 4 cantons they are elected by the legislatures of the cantons Their tenure of office is 4 years in case of 14 cantons, 3 years in 8 cantons and one year in case of 3 cantons. It is to be noted that the salaries of the members of the Council of States are paid by the cantons concerned and not by the Federal Government.

The National Council is the lower House and represents the people. It is really the Council of the Nation. The number of the representatives sent by any canton depends upon population Formerly, a canton was entitled to send one member for every 20,000 persons but at present, the number has been raised to 22,000 A big canton like Berne sends 33 representatives. In order to safe-guard the interests of the smaller cantons, it is provided that every canton or half-canton shall have the right to send at least one representative to the National Council Formerly, the life of the National Council was 3 years, but it was extended in 1930 to 4 years It is to be noted that re-elections to the National Council are very common At present the National Council consists of 187 members The members are elected by proportional representation Every male citizen who has reached the age of 20 and who is not excluded from the rights of citizenship by the laws of the canton in which he is domiciled, has the right to take part in the election Every Swiss citizen who has the right to vote, is eligible to become a member of the National Council

As regards the powers of the Federal Assembly, those are enormous According to Article 71 of the Constitution, subject to the rights reserved to the people and the canton, the supreme power of the Confederation is in the Federal Assembly It has executive, legislative and judicial powers. The legislature can do what it pleases provided it enjoys the confidence of the people. The Federal Tribunal does not possess the power to declare *ultra vires* any law passed by the National Assembly. Its duty is merely to enforce the laws passed by the Federal Assembly The Federal Tribunal is the creature of the Federal Assembly and subordinate to it The Federal Assembly has the power to pass laws on all those matters which are known as concurrent subjects. The Federal Assembly plays a very important part in

the total or partial revision of the Constitution It passes the annual budget It approves of the state accounts and the decrees authorising the loans The consent of the Federal Assembly is necessary for treaties with foreign states, the declaration of war and conclusion of peace The Federal Assembly has the power of general supervision of Federal administration and the Federal Court It decides conflicts of jurisdiction between the federal authorities It has also the power to elect the members of the Federal Council, the President and Vice-President of the Swiss Confederation, the Federal Tribunal, the Chancellor and the Commander-in-Chief The Federal Assembly may be vested by federal legislation with right of election or confirmation.

In Switzerland, there is no such thing as the Speaker of the English House of Commons The National Council does elect a President and a Vice-President for every regular and extraordinary session But he has neither the dignity nor the prestige of his counterpart in England.

The powers of both the chambers are absolutely equal so far as the letter of the Constitution is concerned. But in actual practice, the National Council has become more important than the Council of States. The latter chamber usually allows the lower chamber to have its way

There are a few things that must be mentioned with regard to the Federal Assembly There is no ministerial responsibility as the term is understood in England. The members of the Federal Council are not the members of the Federal Assembly They are not responsible to it for their departments The Assembly cannot turn them out by passing a vote of no-confidence against them. Moreover, the bills introduced by the Federal Council are very rarely rejected or materially altered by the Federal Assembly The institutions of direct democracy in Switzerland have also weakened the position of the Federal Assembly. The Federal Assembly cannot say the last word on legislation In order to become law, the bill must be passed by the people themselves. Another feature to be noticed is that unlike other countries, the bills are introduced in both Houses of the Federal Assembly simultaneously. It is not necessary that they must be passed by one chamber and then sent to the other chamber.

Q. 9. Write a note on the Swiss Judiciary ?

Ans. The Swiss Constitution provides for a Federal Tribunal for the administration of justice in federal matters The members of the Federal Tribunal are to be elected by both Houses of the Federal Assembly sitting in a joint session The Judges hold office for 6 years But they are re-elected so long as they desire to continue in office At present, the total number of the Judges is 24 Any Swiss citizen who is eligible to be elected a member of the National Council can be elected a member of the Federal Tribunal But he must not be a member of the legislature or hold some other office of profit

For the trial of civil cases, the Federal Tribunal sits in three sections In the first section, it tries cases in its original jurisdiction between the Confederation and the cantons. In the second section, it exercises its appellate jurisdiction in cases coming up from the Courts of the Cantons In the third section, it deals with accusations of treason against the Confederation and with other offences against the federal laws.

For criminal cases, the Federal Tribunal is divided into four chambers, and one of them functions as a grand jury In all criminal cases before the Tribunal, the accused is entitled to have the issues determined by a jury of 12.

The jurisdiction of the Federal Tribunal extends to all civil suits between the Confederation and the cantons or between the cantons themselves It also tries cases between an individual or a corporation, and the Confederarion or suits between a canton and an individual or a corporation It has also functions as an administrative court The Federal Assembly not only elects the members of the Federal Tribunal, but also has the power to enlarge its jurisdiction

It is to be noted that the Federal Tribunal is not so powerful as the Supreme Court of U S. A. The reason for this is not far to seek The Federal Tribunal has not the power to declare the laws passed by the Federal Assembly as *ultra vires*. Even if a Federal law encroaches upon the sphere of the canton, there is no remedy in Switzerland. But the Federal Tribunal has the right to declare *ultra vires* a law passed by the legislature of a canton. Moreover, the Judges of the Supreme Court of U. S. A.

hold office for life But in the case of Switzerland, the members of the Federal Tribunal are elected only for 6 years, although there is the custom to re-elect them But this fact does certainly weaken their position

Before 1914, whenever a controversy arose between the Federal Government and a citizen involving some question of administrative law, the matter was decided by the Federal Council However, an appeal was allowed to the Federal Assembly But in 1914, an amendment of the Constitution authorised the establishment of an Administrative Court. However, the Constitution of the Administrative Court was left to the Federal Assembly In 1921, the Administrative Court was established But it is to be noted that the number of cases under administrative law is not very large so far as the Federal Government is concerned and the other cases involving administrative law are disposed of by the Administrative Courts of the various cantons.

☞ Q 10. Discuss the system of direct democracy in Switzerland?

Ans. About direct democracy in Switzerland, Lord Bryce says, "Nothing in Swiss arrangements is more instructive to the student of democracy, for it opens a window into the soul of the multitude Their thoughts and feelings are seen directly, not refracted through the medium of elected bodies" About direct democracy in Switzerland, three institutions have to be noticed and those are the Landsgemeinde, the initiative and referendum

According to Prof Brooks, Landsgemeinde is "the most picturesque and fasicinating" of all the political institutions in Switzerland. It is a meeting of all the adults of the canton in the open air and under the presidency of a person called Landamman Such an assembly meets once a year Such a meeting represents the purest form of democracy "in which the sovereign power of people is directly exercised in all the critical acts of the government by the full assembly of citizens, forming the largest and most conspicuous example of what Rousseau and certain other political philosophers regard as the only democracy" (Lloyd) The power of the Landsgemeinde vary from canton to canton, but generally their powers are the following:—

(1) Revision of Constitution, (2) Passing of ordinary legislation, (3) Election of Executive and Judicial Officials of the canton, (4) Creation of new offices and the fixing of their salaries, and (5) Taxation, debt issues, alienation of public property and grants.

Formerly, the institution of Landsgemeinde was very popular in Switzerland. Such an institution existed in 11 out of the 13 cantons and half-canton during the 19th century. By 1920, their number had decreased to 6. At present, the institution exists only in five cantons

Referendum and Initiative.

The initiative is a positive device and the referendum is a negative device. The initiative is compared to a "sword with which it cuts the way for the enactment of its own ideas into law". The referendum is like a "shield with which the people ward off undesirable legislation." The initiative is the method by which a certain number of voters can request and compel the members of legislature to discuss a certain bill which they have forwarded to the legislature This does not mean that the bill must be passed But the legislature has to discuss the bill which the people considered to be important and urgent from their point of view. Switzerland is the home of initiative. The term referendum implies that a bill which has been passed by the legislature may be referred to electorate for their approval. The object of the referendum is to know the will of the people as expressed by direct vote of the majority of the citizens qualified to vote. Referendum may be optional or compulsory. When it is optional, it is not necessary that every bill passed by the legislature must be submitted for the approval of the people. But in the case of compulsory referendum, the bill has to be referred to the people for their approval or rejection

In the case of federation, the referendum is compulsory in the case of constitutional laws. But it is optional in the case of ordinary laws. Article 89 provides that federal laws are to be submitted for acceptance or rejection by the people if a demand is made by 30,000 citizens or by eight cantons Federal decrees which are of general effect and are not urgent are likewise submitted on demand. It is the duty of legislature to decide

as to what decrees are of general effect and what are not urgent.

In the case of Cantons, the compulsory form of referendum is taking the place of optional referendum There is compulsory referendum in all the cantons for amendments to the Constitution. In certain cantons, referendum is provided for the adoption of the ordinary laws also There is only one canton where there is neither optional nor compulsory referendum for the adoption of the ordinary laws

The institution of initiative is used in the federation for constitutional laws in the two forms, the formulated form and the unformulated form. It is not used in the federation in the case of ordinary laws The unformulated initiative is put in general items. If the Federal Assembly approves of it, it has to undertake the revision of the constitution in the way provided in the initiative demand It has to submit the same for its adoption or rejection by the people and the cantons. If the Federal Assembly does not approve of it, it has to refer the matter to the people in order to ascertain as to whether the people in favour of it or not. If the majority of the Swiss citizens vote in favour of the proposal, the Federal Assembly has to revise the constitution according to the decision of the people In the case of formulative initiative, the demand is made in the form of a bill complete in all its details. In such a case, the Federal Assembly must submit it for the approval of the people and the cantons. If the Federal Assembly does not approve of it or recommends to the people the rejection of the bill proposed, it has to submit to the people the original bill, its own substitute or its proposals for rejection To become law, the bill must be accepted by a majority of voters in a majority of cantons.

It is desirable to explain the procedure of referendum. As a rule, the people are summoned once or twice a year to vote upon the bills which have already been passed by the Federal Assembly or the legislature of a canton In the case of optional referendum, certain preliminary formalities have to be gone through. If the people want to reject a bill which has been passed by the legislature, they must collect a certain number of signatures within a certain period. The period

is 90 days in the case of federal referendum but varies from one month to 12 months in the case of the various cantons. In the case of some cantons, the number of signatures required is 500, but in the case of federation, the number is 30,000 Once the demand for referendum has been made within the prescribed period by the prescribed number of voters, a date is fixed for popular voting While fixing the date, it is always kept in mind that the supporters and the opponents of the bill should get sufficient time to put forward their points of view before the public If the popular vote goes against the bill, the executive declares the same as null and void

A few words may be said regarding the working of the initiative and referendum in Switzerland It is calculated that between 1848 and 1935, the people were called for referendum on 123 occasions. Between 1874 and 1938, there were 38 compulsory constitutional referenda Out of these, the people gave their approval in 31 cases and rejected only in seven cases During the same period, there were 45 referenda on the ordinary laws The people gave their approval in 29 cases and rejected the bills in 16 cases. During the same period, there were 31 constitutional initiatives In 5 cases, the Federal Assembly put forward its own substitutes The people accepted the proposals only in seven cases and rejected it in 24 cases The people accepted the substitute proposals of the Assembly in 4 cases out of 5. It is clear from above that referendum is more effective than the initiative Optional referendum is not adopted in many cases. The number of voters who go to the polling stations, is not very large. Usually, the people have rejected the radical measures

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☞Q. 11. What factors have been responsible for the successful working of democratic institutions in Switzerland ?

Ans Switzerland is the home of direct democracy She has been praised for her successful experiment in direct democracy. The credit is all the more greater because the Swiss are divided by race, language and religion There are three officially recognised languages, viz , German, French and Italian There are also differences of religion. There are Protestants, Catholics

and Jews in the country. However, the successful working of direct democracy in that country is attributed to many causes

(i) One factor which has contributed to the success of democracy in Switzerland is the small size of the country. This helps them to organise themselves for the discussion and settlement of their problems It is the small area of the country that helps the people to work the institutions of referendum and initiative successfully.

(ii) Another cause of success is the absence of partisan spirit. Party system is not strong in the country No minority group has any grievance The people belonging to different shades of opinion work harmoniously with one another There are no parties based on differences of race, religion and language. There is not much of excitement and propaganda at the time of elections As a rule, the wise and the best persons are sent to the legislatures so that the country may gain from their wisdom

(iii) Another remarkable feature of Switzerland is the absence of corruption from public life. All appointments are made on the basis of merit This has resulted in efficiency of administration.

(iv) The democratic institutions have served as a training centre They have encouraged the spirit of responsibility and self-sacrifice. It had destroyed the spirit of intoleration and selfishness It has created a high civic sense among the people. The people are public-spirited and no wonder they work their democratic institutions successfully.

(v) The Swiss are peace-loving and patriotic people. They are passionately devoted to their country. They are not led away by emotions Ordinarily, they bring to their work a balanced judgment All this has resulted in good public life.

(vi) The neutrality of the country has also been partly responsible for the absence of party divisions in the country There are no complications arising out of an active foreign policy.

(vii) The Plural Executive in Switzerland has also added to the stability in the politics of the country and no wonder the people of Switzerland are praised for their successful experiment in democracy.

The American Constitution

☞ **Q. 1. What are the characteristics of the American Constitution ?**

Ans. The American Constitution has many characteristics. In the first place, America has a written Constitution which was adopted in 1787 and came into force in 1789. But this does not mean that the whole of the constitutional law of America is to be found in that document. We have also to take into consideration the 21 amendments in the Constitution. In addition to this, many statutes of the American Congress form a part of the constitutional law of America Moreover, we cannot think of written Constitution of America without considering the important judgments given by the Supreme Court from time to time on constitutional issues. The statutes of the State Legislatures also form a part of the American Constitutional Law.

2 Another characteristic is the rigidity of the Constitution. When we compare the system of amendment of the American Constitution with that of other countries, we find that the American method is most difficult. That is the reason why there have been so few amendments during the last 160 years. It is to be noted that out of the 21 amendments, the first 10 amendments can be considered a part of the original constitution itself Three amendments were made necessary by the Civil War. Thus, very few amendments were made during the 19th century. The Constitution describes two ways of proposing amendments and two ways of ratification A constitutional amendment can be proposed either by two-thirds of both Houses of the Congress or the Congress can call a National Convention for the purpose of drafting amendments on the application of the legislatures of two-thirds of states. The proposed amendments may be ratified either by the legislatures or by Conventions in three-fourths of the states It is the Congress that decides which method of ratification is to be used. Excepting one amendment, all other amendments have been proposed and ratified in the same way. They all have been proposed by a resolu-

tion of the Congress and ratified by the legislatures of the states. Formerly, there was no time limit for the ratification of the amendment. One state ratified a proposal after 80 years. But now it is provided that the work of the ratification must be completed within seven years. Otherwise, the proposal is lost. If a state once gives its consent to an amendment, it cannot go back on it. But if a state has rejected a proposal, it can ratify it later on. It may be noted that there are certain things which cannot be amended at all. The right of every state to equal representation in the Senate cannot be taken away by any amendment except with the consent of the state concerned. Moreover, no state can be divided into two or more states and no states can be amalgamated into one state without the approval of the legislatures of the states concerned.

The critics point out that the system of amendment is extremely rigid and makes it difficult for any constitutional change to take place. The law of the country cannot be changed to meet the changing needs of the country The system is undemocratic. Thirteen states can stand in the way of the passing of the amendment although 35 states are in favour of it. It is pointed out that if we take the least populated 13 states, their total population does not come up-to the population of only one state of New York. But these insignificant 13 states can stop the progress of the country. It is pointed out that 33 members of the Senate can stand in the way of the passing of the amendment. Moreover, it is the states and not the people who are the preponderant elements in the ratification. The number of the persons involved in the whole process of proposal and ratification of the Constitution is about 7400. These people have no mandate from the people for the acceptance or the rejection of the amendment But it is not to be believed that the American Constitution is so rigid that it cannot be changed at all. We know that between 1913 and 1933, 6 major amendments took place. Prof. Munro says that the American Constitution "is a living organism, a Darwinian, not a Newtonic affair".

3. America has a federal form of government. Unlike Canada where the federal government is very strong and that

government has the residuary powers also, the American Federation is weak because the residuary powers vest with the states and the Federal Government has been given some specified powers. The American Federation resembles the Federation of Australia and differs from the Indian Federation.

4. The American Constitution is based on the theory of separation of powers This is due to the fact that the fathers of the American Constitution were influenced by the philosophy of Montesquieu and Locke There is no combination of the legislative and the executive functions as is the case under the parliamentary system of England In the U S A., the President is elected by the people The Congress is elected by the people. The judges of the Supreme Court are nominated by the President, but once appointed they hold office during their good behaviour for the rest of their lives. Neither the President nor the members of his Cabinet sit in the Congress. They are not responsible to the Congress No adverse vote of the Congress can turn out the President or his Ministers. Similarly, the Congress cannot be dissolved by the President Both the Houses of the Congress are elected for definite periods and their life cannot be terminated by an order of the President. It is to be noted that although there is separation of powers, it is not complete. The state is an organism and it is impossible to divide the various organs of the state into water-tight compartments Moreover, the growth of the party-system is acting as a bridge between the executive and the legislature As a matter of fact, there is more of co-operation between the two than it was ever before.

5. Another characteristic of the Constitution is the checks and balances. The President has been given the power of making the appointments, but those must be ratified by the Senate. The President can make treaties, but those have to be ratified by the Senate. The President can declare war, but he can do so only with the approval of both Houses of the Congress. Likewise, the Congress can make laws, but those laws are not valid unless they are approved of by the President. The President has been given two kinds of veto powers If a bill has been passed by the Congress towards the end of the session, the President can finish the bill

by just keeping it in his pocket or not taking action on it This is known as the pocket veto. The President may refuse to sign the bill passed by the Congress. But if the Congress passes the same bill by a two-thirds majority, the bill is passed over the veto of the President This is known as the suspensory veto Moreover, the President can and does exercise a lot of influence over the legislation in the Congress by sending messages. The Congress has the power to impeach the President and remove him from office The President has the power of pardon and reprieve. The Congress can pass the laws, but the Supreme Court can declare them *ultra vires* The two branches of the legislature, the Senate and the House of Representatives, are balancedt against each other. The federal authority is set up against the State Government. The State Government is balanced by the Local Government. Behind all the organs of government, there lies the power of the people.

According to Lord Bryce, "The ultimate fountain of power, popular sovereignty, always flows full and strong, welling up from its deep source, but it is thereafter diverted into many channels, each of which is so confined by skilfully constructed embankments that it cannot overflow, the watchful hand of the judiciary being ready to mend the bank at any point where the stream threatens to break through."

6 Another characteristic of the Constitution is the doctrine of judicial supremacy. In the case of England, the legislature is sovereign and it can pass any law it pleases There are no limitations on it The Courts have no power to declare any law of Parliament as unconstitutional or illegal or *ultra vires*. But in the case of U. S. A, the law of the country is laid down in a written constitution. If any law of the Congress or a State Legislature is against any provision of the Constitution, that law has to be declared *ultra vires*. It is pointed out that between 1780 and 1937, 64 Acts of the Congress out of a total of approximately 58,000 were declared *ultra vires* and unconstitutional by the Supreme Court. It is to be noted that the judicial supremacy reduces the power of Congress and makes it a non-sovereign law-making body. It is said that the Congress is in perpetual stage of non-age and the people of America are

bound by the testament which was made for them by their fore-fathers in 1787 According to Sir Maurice Amos, the National Government ought to be compared not to an infant, an alien or a married woman, but to an agent to whom certain authorities have been delegated by the sovereign people Another evil of the system is that the questions are decided by the Supreme Court not on their merits, but on political grounds The Supreme Court set aside many laws relating to the New Deal of President Roosevelt.

7 The American Constitution emphasises the sovereignty of the people. The Preamble of the Constitution runs thus "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America" In the words of Madison, the American system is based on "that humble determination which animates every votary of freedom to rest our political experiments on the capacity of mankind for self-government".

8. Like the Indian Constitution, the American Constitution guarantees certain fundamental rights to the people.

9. Another feature of the American Constitution was the spoils system. At the beginning, what used to happen was that as soon as a new President was elected, he pleased his supporters by giving them jobs These people remained in office so long as the president during his tenure of office They all worked for their President during his tenure of office Their attitude was highly partisan. If their President was defeated at the next elections, they all had to go The new President was bound to appoint all those who had supported him. It is evident that such a system led to insufficieney, corruption and irresponsibility. "Experienced and worthy public officials were ousted on all sides to make room for political henchmen The public services were thrown into demoralisation every time a change of administration took place The President was harrassed almost beyond endurance by place-seekers and their friends. Congress-

men tended to become more solicitors and dispensers of patronage Administration fell to a general low level, politics itself grew more mercenary and corrupt." In order to remove the evils of the spoils system, a law known as the Pendleton Act was passed in 1883, by which a system of competitive examinations was introduced. In this way, about 80 per cent of the public services came to be recruited by means of competitive examination Even now, the President possesses the power to appoint about 20 per cent of the public servants. This system remains on account of reluctance of the Congress to give up the patronage.

Q. 2 What are the conventions under the American Constitution ?

Ans It is true that the U S.A. has a written Constitution but this does not mean that there are no unwritten elements in it A critical examination of the American system of administration shows that there are the following conventions in the country:—

1. Although the framers of the Constitution provided for indirect election of the President, the election has practically become direct. The people elect the members of the college of electors It is the members of electoral college who elect the President. But a convention has grown that the members of the electoral college who belong to the various parties must vote for that person who has been nominated by third party as a candidate for the Presidency. Since the members of electoral colleges must vote on the party lines, the election of the President is practically completed as soon as the results of the members of the electoral college are declared. When the people vote for a particular person for the college of electors, they know that by voting for him, they are actually voting for that person who has been nominated as a candidate for the presidency by the particular party to which that particular candidate for the electoral and purposes, election college belongs Thus, to all intents has become direct.

2. Another convention is that no American President will stand for re-election for the third time. The precedent was set by Washington himself. The result was that even when anybody stood up for election for the third time, he was defeated. But an exception took place in the case of President Roosevelt. He was elected for the fourth time But it is pointed out that it was due to the circumstances created by World War II.

3. Another convention is the senatorial courtesy According to this, if the President makes appointments in a state, he must do so after consulting the members of the Senate from that particular State As a matter of fact, what actually happens is that the Senators from that State make the choice of the person or persons concerned and the President merely confirms them

4. The growth of the party-system has linked up the legislature and the executive. The reason is that the party which has elected their President, may also have a majority in the Congress. Thus, the emergence of the party system has linked the executive and the legislature

5. Another convention is the growth of the Cabinet of the President. Although the Constitution did not provide for a Cabinet of the President, the number of the ministers who are appointed by the President to help him in his work, is increasing every day

6 Another convention is that the American President gives weekly interviews to the Washington Press. In this way, he keeps the people informed of what he intends to do

7. The representative should belong to the constituency which he seeks to represent.

8 The powers and prestige of the Speaker are wholly the product of usage

9. The rules and regulations according to which the House conducts its business are the product of custom.

10. The Speaker of the House of Representatives is chosen by the House itself, but actually he is the nominee of the majority party and one of its great leaders

Regarding the conventions of the American Constitution, Prof Beard says · "The most complete revolution in our political system has not been brought about by amendments or by statutes, but by the customs of political parties in operating the machinery of Government.,'

Q. 3. Discuss critically the nature of the American federal system.

Ans. The American scheme is the grant of powers to the National Government The residuary powers belong to the states. The state governments have powers which are original, inherent and mostly undefined. According to the 10th amendment to the Constitution, all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people According to Sir Maurice Amos, "The delegation of powers of the National Federal Government is to be regarded not as a concession made by the several states, but as coming from the people of the United States at large That is to say, that the sovereignty of the United States and the sovereignties of the individual states are derived independently from the same source And if it be true that the line of demarcation between the sovereignty of the Federal Government and that of the forty-eight states is to be regarded as so traced that whatever powers that constitution has not given, either expressly or by implication, to the Union, are reserved to the states, that is not because the states have any primacy over the Union, but because the common creator of both, the people, has so willed it."

There is a three-fold division of powers in the U S A. The first list tells us as to what the Congress can do. The second list tells us as to what the Congress cannot do The third list contains those things which the states cannot do.

Q. 4 "The outstanding contrast between the Constitution of England and the U S A is the great extent to which in the U S A the legislature, the executive and the judiciary are independent of one another" Discuss

Ans This refers to the separation of powers in the American Constitution. For answer, please refer to Q 1.

Q 5 "The American Constitution is a system of checks and balances" Discuss.

Ans Please consult point 5 of Q. 1.

Q. 6. Explain the statement that while in England the legislature is supreme, in the U. S A., the Constitution is supreme.

Ans. This refers to the supremacy of the American Constitution and for that please refer to point 6 of Q 1.

Q 7. Describe the system of amendment of the American Constitution.

Ans. Please refer to point 2 of Q 1.

☞**Q. 8. Write a critical note on the American President ?**

Ans. The American President is elected for four years but he can be re-elected The fathers of the Constitution provided for an indirect system of election of the President in order to avoid the danger of demagogues The people were to elect the members of the College of Electors and the latter was to elect the President But as a result of the growth of a convention, the election of the President has become direct The reason is that candidates of the various parties for the College of electors have to give an undertaking to their parties that if they are elected, they will vote for their party-candidate for the Presidency The Presidential electors have become "automata, mere registrants of their party's choice of Presidential candidates" (Laski). On account of this convention, when the people go to the polls to elect the members of the College of electors and vote for a particular candidate belonging to a particular party, they know fully well that they are actually voting for that party's candidate for the Presidency. Thus the National Convention has come to play a very important part in the nomination and election of the President

According to the Constitution, the American President must possess certain qualifications. He must be at least 35 years of age He must be a natural born citizen of the U. S. A. He must have resided in the U. S. A. for a period of at least 14 years.

It is not necessary that a very strong man is the best candidate for the American Presidency It is desirable that the candidate should make a popular appeal. He should be able to carry his state with him. Ordinarily, that candidate

is preferred who belongs to a big state like New York and can also carry his state with him A Roman Catholic will not be accepted as a candidate The same will be the case with a disbeliever in Christianity He should have reputation for firmness of character, intellectual ability, good family life and as a good administrator Formerly, it was a qualification to be born poor and then having risen to power through industry and hard work, but that is no longer so in the 20th century

The American President gets a salary of 75,000 dollars annually. He has his official residence in what is known as the White House He gets a large number of other allowances. Like the King of England, he is above law. So long as he is the President, he cannot be arrested for any crime irrespective of the seriousness of its nature No court can try him. However, he can be impeached for treason, bribery or other high crimes He can be removed only by means of impeachment The President is impeached by the House of Representatives before the Senate. But impeachments have been very few.

Powers of the President : Executive Powers.

1. The Constitution provides that it is the duty of the President to "take care that all laws be faithfully executed" At the time of assuming his office, the President has to take the oath to "preserve, protect and defend the Constitution of the United States"

2. The President is the supreme director of the administration of the country He has to issue directions to the heads of the various departments and also to their subordinates. He has been given the power of making ordinances to enforce the laws and run the administrative machinery

3. As the President is responsible for the efficient working of the administration, he has been given the power to make appointments. The appointments are of two kinds. To the first category belong those officials whose appointment is made by the President, but the confirmation of the Senate is necessary About 15,000 to 16,000 persons belong to this category. The second category includes those officers whose appointment is vested by the Congress in the President alone, or the Court of Law, or the heads of the departments. It is to be noted that the

Senate usually gives a free hand to the President to appoint the members of his Cabinet. Similarly, the President is given a free hand in the choice of diplomatic representatives and personal envoys. But the appointments to the Supreme Court are very thoroughly scrutinised The President can nominate and keep an official in office even against the will of the Senate. The President may appoint a person, but the Senate may reject the same

A reference may be made to the convention of Senatorial Courtesy in this connection. "Stated briefly, this is the practice of refusing to confirm the nomination of any local officer such as a Post-Master or Collector of Internal Revenue, unless the nominee is satisfactory to the Senator or Senators from the state concerned provided of course that the Senators are of the same political party as the President himself"

4 The President is the Commander-in-Chief of the Armed Forces of the country In that capacity, he has been empowered to do anything to overcome the enemy.

5 The President appoints ambassadors and receives ambassadors He can appoint even special envoys The President carries on his foreign relations with the help of his ambassadors and subordinates He is given the right of entering into treaties with foreign countries But those treaties must be ratified by a two-thirds majority of the Senate.

A way has been found to avoid the sanction of the Senate. Instead of calling the treaty a treaty, the same has been named as an "executive agreement" Such an agreement does not require the sanction of the Senate

6 The President can declare war but he can do so only with the consent of the House of Representatives and the Senate However, the President may create such a situation that the war becomes inevitable

7. The President has the exclusive power to recognise other states Franklin Roosevelt recognised Soviet Russia in 1933 Theodore Roosevelt recognised Panama as an independent state in 1903. Wilson brought about the downfall of the revolutionary government of Huerta in Mexico by withholding his recognition from that government.

8. The President has the power of pardon, reprieve and

amnesty The power of pardon is subject to two limitations The offender must be convicted of offences against federal laws. The President cannot exercise the power if the offender has violated a law of a state. The second limitation is that the President cannot pardon an offender who has been punished by impeachment By means of reprieve, the President can postpone the execution of the sentence In the case of amnesty, action is taken by the President on the recommendation of the Attorney-General. This action is taken when a large number of persons are guilty of some political offence

Legislative Powers.

In spite of the fact that the American Constitution is based on the theory of the separation of powers, and the President and the Congress are independent in their respective spheres, American President exercises a lot of control in the legislative field It is true that the President does not possess the power of summoning the Congress except in special sessions It is also true that he cannot adjourn prorogue or dissolve any House of the Congress It is true that he cannot initiate any bill in the Congress It is also true that he cannot sit in the Congress and participate in its work, although Washington addressed the members of the Congress But it cannot be denied that the President has a lot of control in the legislative field

1 The President has been given two kinds of veto powers. Suspensive veto and Pocket veto When a bill is passed by the Congress, it is sent to the President for his assent But the President may veto the bill However, the Congress can repass the same bill by a two-thirds majority, and the bill passes even over the veto of the President It is to be noted that the veto power has been used very frequently by the Presidency Between 1789 and 1925, this veto power was used for about 600 times. But it was only on thirty-six occasions that this suspensive veto of the President was reversed The Congress has no time to pass a bill twice. Under the circumstances, the President can kill any measure which he dislikes by the use of his suspensive veto

2. The President can finish a bill by the use of the pocket veto. If a bill is sent to the President for his assent, and within

less than 10 days the Congress is adjourned and the President has not given his assent to it within that period, the bill is automatically rejected This is called the pocket veto.

3. The President exercises a lot of influence on legislation with the help of his power of sending messages The Constitution requires the President "to give to the Congress from time to time information on the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient The President sends a message at the beginning of every session of the Congress In these messages, the President puts forward his own programme and also gives directions to the Congress to pass legislation of a particular type. The Congress dare not ingore the messages of the President. When the President addresses a message to Congress, the same is broadcasted to the nation The message is reproduced verbatim in every news-paper Editorials are written on it The message is discussed in discussion groups The result is that the Congress cannot afford to ignore the message sent by the President The Committees of the Congress frame bills concerning the various parts of the message and introduce the same into the Congress Many important legislative measures passed by the Congress owe their origin to the messages from the President Sometimes, these messages contained important declarations of state-policy The famous Munroe Doctrine was enunciated in a message to the Congress The famous 14 points of Wilson which formed the basis of the Peace Settlement of 1919 were embodied in a message to the Congress

4. The President can legislate on his own account. This he can do that by the issue of "executive orders" which have the force of law. This power is sometimes known as the "Ordinance Power". This power resembles the delegated legislation in England As the laws passed by the Congress omit the minor details, these have to be supplemented by the executive orders of the President

5. Formerly, the Congress used to have control over the budget The Act of 1921 has made the President the manager of the finances of the country At present, the budget is prepared under the supervision of the President and estimates are approved of by the President.

6. The President has the power to call both or either House of Congress in a special session. In 1933, Roosevelt called many special sessions of the Congress to pass important legislation. This power can be exercised by the President in his discretion

7 The President can influence legislation by meeting the Chairmen of various committees and other influencial members in his own office or over a cup of tea, and impress upon them the necessity of passing a particular legislation According to Ogg and Ray, "His (President's) acts may range all the way from original encouragement or gentle persuation to hold ultimatum e g, a threat to hold Congress in session until it does what he wants, or per chance to veto proposed legislation if persisted in"

☞Q. 9. What are the legislative powers of the American President ?

Ans. Please refer to Question 8 above.

Q. 10. Explain the system of election of the American President ?

Ans. Please refer to Question 8 above.

☞Q. 11. Describe the relations between the American President and the Congress.

Ans. What is required to be shown in this question is how far the President influences legislation and controls the Congress and how far the Congress influences the actions of the American President. The student should compare the powers of the President with those of the Congress.

☞Q. 12. Compare the position of the American President with the British Prime Minister.

Ans. Please refer to the Constitution of England where this question has already been answered.

Q. 13. Write a note on the American Cabinet and compare it with the British Cabinet.

Ans. It is true that U. S A. has not a Cabinet form of Government, but the American President has a Cabinet which differs materially from the English Cabinet The Constitution does not mention a Cabinet which formulates in its collective capacity the policy of nation The only reference is to the heads of the departments who may be consulted by the President From 1791, the President has been summoning the meetings of the heads of the executive departments for the discussion of important matters As a rule, the meetings are held twice a week The proceedings are informal and confidential The heads of the departments are known as the Cabinet and their number is at present 10 The Cabinet is a body of advisors to the President It is not a Council of colleagues with whom he has to work and upon whose approval he depends Franklin Roosevelt went ahead with his plan for the change of the Supreme Court without most of the members of the Cabinet. The members of the Cabinet may influence the decisions of the President, but they cannot control him. The President can overrule them. President Lincoln is said to have made the following remarks when all the seven members of his Cabinet differed from him "Seven nays, one aye. The ayes have it". It is said that President Jackson had his "Kitchen Cabinet" which was far more influential than the official Cabinet. A member of the Cabinet should always remember that he will live his term in the President's shadow. His own substance will depend upon the will of the President. Wilson treated his Secretaries of State like office-boys. When Lincoln became President, Seward was more widely known than the President, and he expected that Lincoln will do what he will say, but that did not come out to be true

The President consults the ministers to clarify his own mind and not to find out a collective decision It is no business of the minister to resent the decision of the President His only duty is to carry out the will of the President so long as he can. He should never forget that his resignation will have no effect at all. The cleverness of the minister depends

upon the fact that he can persuade the President to accept his point of view.

Cabinet office is an interlude in a carrier. It is not a carrier by itself You continue so long as you agree to act as the President's man The office has rarely served as a high road to the Presidency.

There is no collective responsibility among the ministers. A few of them may be turned out, but the others may be allowed to continue

The members of the Cabinet do not sit in the Congress. They may be required to give information to the Congress They may have to appear before Committees to defend the measures they have advocated They may make public sheeches in support of the general policy of the Government. But they should never resume that it is their own show which they can run in any way they please They should not be over-enthusiastic They should know that if they shall do so they may be dismissed like Mr Lansing who was dismissed by President Wilson

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☞Q 14. Explain the composition and powers of the American Senate

Ans The Senate consists of 96 members As it is the House of the States, the Senators are the representatives of the States The Constitution provides that every State, whetner big or small, shall have the right to send two members to the Senate. No state can be deprived of its right of equal representation to the Senate even by means of a constitutional amendment against its own will

Formerly, the elections of the Senate were indirect The Senators were elected by the members of the State legislatures But in 1912, the system of election was made direct by means of a constitutional amendment Thus, since 1913, the Senators are elected directly by the people of the states concerned The system of election is the same as in the case of House of Representatives It is to be noted that this constitutional amendment has brought about a revolution in the status and prestige of the Senate. It can legitimately claim to have

the same representative character as is possessed by the House of Representatives.

A Senator is elected for 6 years, but one-third of the whole retire after every two years The result is that the whole of the Senate is never dissolved. The Senate becomes a continuous body. Moreover, the Senators are re-elected many times. Three or four terms are not rare.

Senators have the same rights and privileges as the members of the House of Representatives have. They enjoy the freedom of speech in the House. They cannot be arrested while attending a session, going to and returning from it, for any offence except felony, treason or breach of peace. The Senators get an annual salary.

Certain qualifications are required from the members of the Senate. The first qualification is the residential qualification. A Senator must be a resident of the state which he seeks to represent. He must be a citizen of the United States of not less than 9 years' standing. He must not be less than 30 years of age.

The Vice-President of the U. S A. is the President of the Senate. This is the only function of the Vice-President The Vice-President presides over the meetings of the Senate and has a casting vote in the case of tie

Powers and Functions of the Senate.

The American Senate is the strongest second Chamber in the world. It has been given both executive and legislative powers.

1. As regards the legislative powers of the Senate, Money Bills cannot originate in the Senate. They must originate in the House of the Representatives. But this does not mean that the Senate has no control over Money Bills. It has rightly been pointed out that the Senate can strike out every-thing from the Money Bill except its title. It can insert completely new proposals of its own Although technically it cannot amend the Bill, the actual result is that the Senate puts forward a wholly new Bill. Sometimes, the amendments made by the Senate may run to hundreds. It should not be forgotten that no Money Bill can be passed without the

consent of the Senate. Consequently, the Senate exercises a substantial control over Money Bills

2. As regards ordinary bills, they can be introduced in the Senate in the same way as they can be introduced in the House of Representatives It is pointed out that "the Senate has originated more important legislation than the House." The Senate plays a very important part in the field of legislation No law can be passed if the Senate is opposed to it. Some compromise has to be made to meet the point of view of the Senate Let it not be forgotten that the Senators possess more experience and enjoy greater respect and prestige than the members of the House of the Representatives

3. In addition to legislative powers, the Senate has been given executive powers also The Constitution provides that the appointments made by the President shall be subject to the advice and consent of the Senate It is true that the advice of Senate is seldom sought by the President, but he has to secure the consent of the Senate to the appointments made by him As a rule, the Senate confirms the appointments made by the President Moreover, a President can keep a person in office even when the Senate has refused to confirm that particular appointment. The reason is that the appointment can continue till the end of the session even if the Senate refuses to confirm After the session is over, the President can reappoint the same person in the same office The process can be repeated, if necessary. President Coolidge made use of this method to retain Mr. Warren, his Attorney-General, in spite of the oppositive of the Senate.

The growth of the Senatorial courtesy has helped the President to honour the Senate and get his things done from the Senate. Senatorial courtesy means that when the President makes federal appointments in a state, he must consult the Senators from that State President Garfield lost his life because, he refused to act according to this convention.

4 The President has the right to enter into treaties, but those treaties must be ratified by a two-thirds majority of the Senate. Usually, the treaties are not rejected by the Senate, but sometimes the Senate rejects them. It is well-known that the Treaty of Versailles of 1919 was rejected by the Senate.

5 The Senate has by usage exercised the power of making investigations into the allegations against the various department. The Senate has exposed scandals in high places by this method. These investigation committees have the power to summon witnesses and ask for the production of papers and other information from the departments

6 The Senate has the sole power to try all impeachments. The President, the Vice-President and all civil officers of the U. S. A may be impeached. The charge of impeachment is brought by the House of Representatives and the Senate has to hear it.

The Senate is the most powerful second chamber in the World This strength is due to many causes. (1) The Senate is a quasi-permanent body While the tenure of office of the members of the House of Representatives is two years, a Senator sits for six years The result is that that all the Senators do not go out at one time. After every two years, fresh blood is injected into it. The longer term and the quasi-permanent nature of the Senate add to its powers and strength. (2) The small size of the Senate makes it a really deliberative body and adds to its importance It is to be noted that the Senate consists of 96 members and the House of Representatives of 435 members. (3) The members of the Lower House consider a promotion to become Senators. The result is that the more experienced and brilliant Americans prefer to go to the Senate and add to its strength. De Tocqeville says . "On entering the House of Representatives of Washington, one is struck by the vulgar demeanour of that great assembly. The eye frequently does not discover a man of celebrity within its walls. Its members are almost all obsecure individuals .. At a few yards' distance from the spot is the door of the Senate which contains within a small space a large proportion of the celebrated men of America Scarcely an individual is to be perceived in it who does not recall the idea of an active and illustrious career The Senate is composed of eloquent advocates, distinguished generals, wise magistrates and statesmen of note, whose language would at all times do honour to the most remarkable parliamentary debates of Europe" (4) The absence of the Cabinet system has given the Senate its opportunity by denying to the House of Representatives the power of making and unmaking governments. (5) The rules of procedure of the Senate have enabled it to become the forum

of the nation The system of closure prevails in the Lower House and it curtails the time devoted to the debates and deliberations over any bill There is no such thing in the Senate and that contributes to its efficiency and importance. (6) The executive powers of the Senate have added to its strength The appointments made by the President have to be ratified by the Senate. The same is the case with the treaties Its consent is also required for the declaration of war (7) The direct election of the members of the Senate has also added to its strength The Senate can claim to be as much representative of the people as the House of Representatives

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☞**Q. 15. How far is it true to say that the American Senate is the most powerful second chamber in the world ?**

Ans. Please refer to Q 14 above

☞**Q. 16. If you are offered a seat in the Congress, would you like to sit in the Senate or the House of the Representatives and why ?**

Ans. I would like to sit in the Senate and that is due to the large number of powers possessed by the Senate Please refer to the powers of the Senate as given in Q 14 above.

☞**Q 17. Explain the position of the American Speaker.**

Ans. The Speaker of the House of Representatives is the most important officer of that House. He presides over the meetings of the House. A new Speaker is elected at the beginning of every House of Representatives. Unlike the English Speaker, he has to contest his seat to the House There is no convention for the re-election of the Speaker The candidate of the majority party is elected the Speaker. The Caucus of the majority party selects the person who is to be put up as a candidate The American Speaker is elected on party lines and he continues to be so even after his elections He continues to be a partisan He does not act as impartial moderator He is an active politician who has to use his position and authority in the interests of his party.

He has the right to vote and take part in the proceedings. Speaker Henry Clay once had his name called first so that his vote could influence his followers. He used to take part in the debates Speaker votes when his vote is decisive or when his vote is needed to make the two-thirds majority. He presides over the meetings and maintains order and discipline He opens and closes the sessions of the House. He has to sign all the acts, addresses, resolutions, writs and warrants issued by the House of Representatives He decides the question of order and procedure He represents the House in its collective capacity He recognises the persons in the House. He interprets the parliamentary laws. By exercising the above powers, American Speaker can control and shape actual legislation. It is to be noted thar neither the American President nor his ministers sit in the House of the Representatives There is no leadership in the House. That role is taken over by American Speaker.

☞Q. 18. Explain the Committee System of the U S A. and show how far it differs from the British Committee System

Ans. The Committee system in U S. A has a peculiar importonce of its own. In England, the Prime Minister and his colleagues sit in Parliament It is they who initiate most of the legislation. It is the executive that controls and directs work of the Parliament. But there is no such thing in the U S A. Neither the President nor the members of his Cabinet sit in the Congress The Congress is leaderless. It is this fact that gives great importance to the Committees in the U. S. A. In England, it is the ministers who initiate legislation. In the U. S. A, it is Committees which initiate legislation. When the President sends a message to the Congress, the various Committees start their work by framing bills on the subjects contained in the message Thus, in most cases, it is the Committees which are responsible for the origin of the bills. Moreover, there is too much rush of work in the Congress. The bills are rushed through it in the same form in which they are sent by the Committees. A favourable report by the Committee guarantees

its safe passage by the Congress. An unfavourable report by the Committee is tantamount to the death of the bill itself No wonder, the Committees are ragarded to be the real legislative bodies in the American Congress Wilson described them as "little legislatures" Speaker Reed called them "the eye, the ear, the hand, and very often the brain of the House."

1 There are many kinds of Committees in the House of Representatives There is the Committee of the Whole House. As in England, the House transforms itself into a Committee of the Whole for the consideration of the revenues, appropriations and other bills One hundred members form the quorum. The Speaker does not preside over the meetings of this Committee which is presided over by a special Chairman. The Speaker himself takes a seat in the Committee. There is no roll-call in this Committee. Bills are critically examined by this Committee

2 Special Committees are appointed for investigating particular problems These Committees finish as soon as their work is finished

3 Conference Committees are set up by the House of the Representatives to confer with similar Committees of the Senate in order to iron out the differences between the two Houses on a particular bill. These Committees end as soon as their work is finished.

4 There are also many Standing Committees. These are the most important. The leading Standing Committees in the House of Representatives are those on ways and means, appropriations, rules, education, foreign affairs, agriculture, judiciary, banking and currency, public lands, etc The important Standing Committees of the Senate are those on appropriation, finance, foreign relation, judiciary, naval affairs, and inter-state commerce.

5 The Steering Committee is chosen by the Caucus of the majority party. It consists of the leading members of the party. It supervises the business of the House. It selects those bills which the majority party is keen to get them passed. The majority Floor leader is Chairman of the Steering Committee.

It is to be noted that every party Caucus selects a "Committee on Committees" which draws up a list of the persons who are to serve on the various Committees. The quota of every party on a Committee is fixed by mutual agreement. Chairmanships of various Committees are eagerly sought for because they carry with them some amount of distinction and are also lucrative.

Distinction between American and English Committee System

1. In England, the members of the various Committees in the House of Commons are chosen by a "Committee of Selection". In the U. S A, the party Caucuses select a "Committee on Committees" which selects the members from the various parties to the various Committees.

2. In England, the bills are referred to the Committees after their second reading In the U. S. A., the bills are referred to Committees before there is any discussion on their principles. It cannot be denied that the English system is better than the American system because the latter involves a lot of waste of time and energy. It may be that when a bill has been produced by a Committee after a lot of labour, it may be straightaway rejected by the Congress. But the American system gives greater freedom in over-hauling the bills.

3. In England, the Chairmen of the various Committees do not get any prominence or publicity. In the U. S. A, important bills are named after the Chairmen of the Committees.

4. In England, the Chairmen of the Committees are absolutely impartial. In the case of U. S. A, Chairman "is a power in the Committee and sometimes dominates it".

Q. 19. Write notes on Lobbying, Filibustering, Log-Rolling, Pork-Barrel Legislation and Gerrymandering ?

Ans. Lobbying.

It is desirable to explain a few terms which are usually used in America. One such term is lobbying. There is no such thing in England on account of the leadership of the Cabinet

in the House of Commons. The necessity of this has arisen in America on account of the absence of any leadership in the Congress In England, the members of the Parliament do what they are required to do by the party whips In the U. S A, the members of the Congress enjoy a lot of freedom in the matter of voting. Consequently, groups are formed to advance or oppose measures which are in the Congress This activity by the interested groups is called lobbying The representatives and the agents of the groups adopt all kinds of means to oppose the bills which they do not like and advance those which they like Very highly paid people are employed for this purpose Sometimes ex-Senators or ex-Congressmen are employed for this work They use all kinds of pressure tactics They are very influential both in the Congress and the Legislatures of the States

Filibustering

Filibustering is one of the devices followed by the minorities in the legislature In the U. S A. the privilege of unrestricted freedom of debate was abused to delay legislation. In 1903, Senator Tillman got up in the Senate with a copy of Byron's Childe Harols and started reading from it He kept on reading until the members of the Senate agreed to delete from the bill certain provisions to which he had objected Such filibuster can be organised by a few members or even an individual can resort to it In order to remove the evils of filibustering, the Senate adopted in 1917 a rule by which a debate can be brought to an end by a two-thirds majority or a motion signed by 16 members

Log-Rolling

This pharse has been taken from the 19th century history of the U S A In those days, pioneers of the frontier used to cut wood for their cabins and helped each other to roll up the logs In the U S A, there is a lot of money with the Federal Government for distribution If a member wants public funds for some private interest, he has to get the help of other members who want a similar thing By mutual co-operation, the members can get what they want. This looks like the log-rolling of the 19th century and is termed such.

Work-Barrel Legislation

During the 19th century, there was a custom in the Southern States to allot a certain amount of pork to the slaves working on the estates. This was done after certain intervals. The slaves shared the pork contained in the barrel among themselves. A similar thing is done by the Congressmen in the U S A. They try to get those laws passed which bring a lot of money to their constituents. If they fail to do, there is every likelihood of their losing the seat itself. These laws are known as Pork-Barrel Legislation.

Gerrymandering

The object of gerrymandering is to get more seats for the party in power than she is entitled to get This is done by cutting the electoral constituencies in such a way that the majority party wins its seats by a small majority and the minority party loses seats with very large votes and also wins them with big majorities. According to Brook, "In districting a state or city, spread the majorities of your own party all over or over as many districts as possible. If you have not enough votes to control every district, concentrate the strength of your opponents in as few districts as possible, so that it will do them the least good".

☞ Q. 20. Write a critical note on the Supreme Court of U S A

Ans The Supreme Court is the highest Court of the U. S A Originally, it had only six judges, but now the number has been increased to nine These judges are nominated by the President, but his nomination have to be confirmed by the Senate. Experience shows that the Senate scrutinises the names very thoroughly before confirming them. Beck says: "When the President is considering a possible nomination, the fact is generally given to the public by an inspired intimation from the White House. At once the fierce light of publicity is turned upon the prospective nominee His past as lawyer and publicman is subjected to the severest scrutiny. Public opinion will not tolerate that any one who has not won distinction at the bar or on the bench, and who has not as a publicman become generally known throughout the

the United States, shall be considered. When the nomination is made, the Committee on the Judiciary of the Senate makes a more careful examination than in the case of another public official, and if there be any charge, affecting either his character or ability, the Committee carefully inquires into its truth or falsity. Upon the report of this Committee, the full Senate, in executive and therefore secret session, reconsiders the matter, and only when a majority of that body gives its approval can the President issue the Commission. As a result, the Justices of the Supreme Court have been, with few exceptions, lawyers of distinction and publicmen of general reputation. The reason for this meticulous case is not only because of the grave nature of the duties and the potential power of a Justice of the Supreme Court, but because he holds his office for life, and can never be removed except by impeachment for high crimes and misdemeanours" Impeachments are very rare. A Judge of the Supreme Court was impeached only once, but the impeachment did not succeed.

The Chief Justice gets a salary of 13,000 dollars annually. The other Judges get 12,500 dollars each These salaries cannot be reduced during their term of office The session of the Supreme Court lasts from October to June every year. The presence of six Judges is necessary to pronounce a decision.

Jurisdiction of the Supreme Court

Supreme Court has both original and appellate jurisdiction. The original jurisdiction is limited to cases affecting ambassadors, public ministers and Consuls The original jurisdiction also extends to cases in which a State is a party. It is to be noted that the Supreme Court does not try many cases in its original jurisdiction

2 The appellate jurisdiction of the Supreme Court is very important It is as an Appellate Court that it has done a great service to the country As an Appellate Court, it hears appeals both in law and equity from the District Courts, the Circuit Courts of Appeal, the highest State Courts, the Court of Claims, the Court of Appeals from the Districts of Columbia, the Court of Customs and Patent Appeals.

The legislature of the State of New York passed a law which forbade the employers from requiring the employees to work for more than 10 hours a day or sixty hours a week. Lochner, an employer, questioned the validity of the Law as being against the Constitution The highest Court of the State held that the law was constitutional He took an appeal to the Supreme Court which held that the law was unconstitutional and therefore invalid.

In 1936, President Roosevelt was re-elected the President of America He carried almost all the States His party had a majority in both Houses of the Congress But the Supreme Court by a majority of five to four invalidated the New Deal Legislation and the President was helpless.

During the time of Abraham Lincoln, the Congress passed a law by which it abolished slavery throughout the length and breadth of the country But the Supreme Court held that the law abolishing the slavery was unconstitutional and void

The Supreme Court has played a very important part in adding to the powers of the Federal Government A lot was done in this connection by Chief Justice Marshall by his doctrine of implied powers

By the theory of implied powers, the power to borrow money is taken to imply the power to issue currency notes The power to regulate commerce implies also the power to control steamships, aeroplanes, telegraphs, radio, etc The doctrine of implied powers has increased the powers of Supreme Court to such an extent that it is called by Prof Laski the third chamber of the legislature

The great importance of the Supreme Court can be realised from the fact that there is as much interest shown in the appointment of a Judge of the Supreme Court as in making of a ministry in England The reason is obvious The attitude of the Court must depend upon its composition and it is always safer to send safe persons to the Supreme Court. It is well-known that the laws which Roosevelt got passed were declared unconstitutional by the Supreme Court at the beginning Later on, many members died or resigned and all the members of the Supreme Court came to be those persons who were nominated by Roosevelt The result was that no law which was passed by the Congress on the recommendation of

Roosevelt was held unconstitutional.

The critics point out that the Supreme Court is not merely a third chamber of the legislature, but a super-legislature. It occupies a much superior position than both of the Houses of the Congress The reason is that even if a bill has been passed by the Congress and approved by the President, it can still be declared *ultra vires* by the Supreme Court While an appeal can be taken against the Congress, the vice versa is not true. There is no power above the Supreme Court except the complicated machinery provided for the amendment of the Constitution in the U S. A Since its will is supreme, the Supreme Court can act irresponsibly. Experience shows that the Judges of the Supreme Court have not always acted in an impartial manner. Their decisions have not been above reproach

The Supreme Court may refuse to act according to the need of the country. The whole country may demand a particular bill to be passed and the Congress may pass it accordingly. But if 5 Judges out of 9 give their decision against it, nothing can upset that decision. This is what actually happened when the Supreme Court declared as *ultra vires* the law abolishing slavery in the U S A. President Abraham Lincoln had to resort to civil war for five years to set this decision aside But this does not happen always It is well-known that the Supreme Court opposed the New Deal Legislation Although Roosevelt resented it and put forward proposals to reform the Supreme Court itself, nothing could be done in actual practice If such a strong President could find himself helpless, the lot of others can better be judged.

Q 21. Discuss the doctrine of judicial review in the American Constitution

Ans Please refer to Q. 20 above.

☞**Q. 22. Explain the American party system and show why it is so highly organised.**

Ans The Party-System in America is the most highly organised in the world This is due to many causes (1) The most important cause is the larger number of elections that have to be fought in the U. S. A. The American President is to

be elected every four years The same is the case with the Vice-President. The members of the House of Representatives have to be elected after every two years One-third members of the Senate have to be elected after every two years The Governors of the States have also to be elected The same is the case with the State Legislatures. In certain States, the Judges are also elected. Parties are also required for running the elections of the local bodies (2) The federal system of the Government in the U. S A. also makes the party system necessary. There is a division of powers between the Congress and the States. It is only the parties that make possible the co-operation between the federal authorities and state authorities. (3) The party system serves as the bridge between the executive and the legislature in the U S. A. In this way, the evils of the separation of powers are lessened (4) There is a lot of patronage to be distributed and those who want a share in it, add to the party strength The various vested interests in the country who want to safeguard their own interests or want to further their interests, add to the party strength.

There are a few characteristics of the American Party system which must be noted. There is no fundamental difference between the principles of the two dominant parties. According to Prof Brogan, the American parties are "names which conceal all the range of potent American political opinion, and if one party were suddenly to be extinguished, there is no shade of opinion in it which could not be represented in the surviving party and the weight of that opinion in the surviving party will not be much greater or less than in the vanished congeries." According to Lord Bryce, the two parties are like two empty bottles, each bearing a label denoting the kind of liquor it contains. According to Dr. Finer, "America has only one party, the Rebublican-cum-Democratic, divided into two nearly equal halves by habit, the contest for office, the Republican being one-half and the Democratic the other half of the party" The reason for this is that both the parties include practically the same points in their election-manifestoes in order to capture votes of the people who belong to the different parts of the country and who have different interests to safeguard.

There is no continuity in the development of the party system in the U. S. A. Many a time, the old parties have

disappeared and new parties have come into existence. It is pointed out that the U. S. A. is a vast country where there is no uniformity of problems New problems give rise to new parties It is well-known that at the beginning there were the Federalists and the Jeffersonian Republicans The former were in favour of making the Federal Government strong The latter were the champions of the rights of the states From 1816 to 1830, there were no definitely marked national parties This period is known as the "era of good feeling", although it was "an era of particularly bad feeling, based on personal rivalries". During the forties of the nineteenth century, the Whigs and the Democrats came to the front The Whigs stood for protection in industry, establishment of a National Bank and a policy of social improvement with the help of the state. The Democrats stood for individualism and the extension of suffrage. During the 1850's and 1860's, the issue of slavery divided the parties. Those who opposed slavery came to be known as the Democrats Although slavery was abolished by the Civil War, the Republicans and the Democrats have continued to exist and are even to-day the two major parties. But it is to be noted that between 1860 and 1951, their evolution "has rather taken from of consolidation of party structure than a collective adherence to any single principle or policy".

Acomparison of the programme of two parties shows that there is not much difference in their fundamentals

An other feature of the American party-system is its sectionable character The American parties are not based on religion, race or temperamental differences They have an economic basis. They are founded upon permanent sectional interests, above all upon those of an economic character.

Still another feature is the large amount of money which is spent by the parties on the elections It is said that in the Presidential elections of 1928, the Republicans spent 10 million dollars and the Democrats spent 7½ millions In 1936, the Republicans spent about 275, 727, 638 dollars and the Democrats 922, 840, 685 in the Presidential elections. Laws have been passed to lessen this evil, but the evil still persists.

There is' also the presence of the party caucuses, party-machine, bosses and rings. Prof Munro says "There will be bosses in American politics so long as Government by patron-

age, the spoils system, the multiplicity of elective offices, the ballot, the frequency of polling, the lobby, the policy of legislation by trade and bargaining, the gerrymander, the pork-barrel and dozen other iniquities combine to place at a disadvantage the leader who insists upon methods of electoral combat".

Party Organisation

The Primary. Until recently, the party-organisation was more or less uniform The Primary was the unit of organisation There was a Primary in the smallest electoral area, town, county or city ward The Primary was a meeting of all the qualified voters of the party in that area. It elected not only candidates for the various elected offices of that locality, but also elected delegates for the Convention or the City Convention. It appointed a Committee of the party to attend to the work of the party in that locality.

Above the Primary, there was the Convention. It consisted of the delegates from the Primaries. Its functions were similar to those of the Primaries It elected delegates to the State Convention.

The State Convention consisted of the delegates from the Conventions and its duty was to run the various elections in the State and send delegates to the National Convention.

The National Convention consisted of the delegates from the State Conventions Its function was to nominate candidates for the Presidency and the Vice-Presidency. to formulate the "platform", and organise a new National Committee to carry on the presidential campaign and act for the party until the next convention is held four years later.

Experience showed that there were many abuses in the system. The good citizens absented themselves from the meetings of the Primaries on account of the atmosphere prevailing there. A few party leaders controlled the Primary and got themselves and their friends elected as candidates for local offices and delegates for the Convention. The boss and the ring controlled the Primary which acted according to its dictation It was found that the boss and the ring used fraud, intimidation, force and all other questionable methods to get things done in their own way from the Primaries. Efforts are being made to remove these abuses.

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The Russian Constitution

Q. 1. What are the characteris.ics of the Russian Constitution of 1936 ?

Ans The first characteristic of the Constitution of 1936 is that it contains a summary of the achievements which have been made by the Communist regime in the U. S S R It is the registration and legislative embodiment of what has already been achieved and won by the people of Russia It clearly shows that a Socialist system has already established itself in the country This achievement can be dercribed in these words · "From each according to his abilities, to each according to his work."

2 The new Constitution of the U S S. R proceeds from the fact that "the capitalist system has been liquidated, and that the Socialist system has triumphed in the U. S. S. R. The main foundation of the draft of the new Constitution of the U. S S. R. is the principle of Socialism whose main pillars are things that have already been achieved and realised · the Socialist ownership of the land, forests, factories, works and other instruments and means of production , the abolition of exploitation and exploiting classes , the abolition of poverty for the majority and luxury for the minority , the abolition of unemployment , work as an obligation and an honourable duty for every able-bodied citizen, in accordance with the formula . "He who does not work, neither shall he eat ", the right to work. i e. the right of every citizen to receive guaranteed employment , the right to rest and leisure , the right to education, etc , etc The draft of the new Constitution rests on these and similar pillars of Socialism It reflects them, it embodies them in law "

3 The new Constitution is based on the fact that "there are no longer any antagonistic classes in society ; that society consists of workers and peasants , that it is these classes, the labouring classes, that are in power ; that the guidance of society by the state (the dictatorship) is in the hands of the working class, the most advanced class in the society , that a constitution is needed for the purpose of

consolidating a social order desired by and beneficial to the working people."

4. Another characteristic of the Constitution is that it is profoundly internationalistic "It proceeds from the proposition that all nations and races have equal rights It proceeds from the fact that neither difference in colour or language, cultural level of political development, nor any other difference between nations and races, can serve as grounds for justifying national equlity of rights It proceeds from the proposition that all nations and races, irrespective of their past and present position, irrespective of their strength and weakness, should enjoy equal rights in all spheres of the economic, social, political and cultural life of society"

5 Another feature of the Constitution is its consistent and thoroughgoing democratism. There are no reservations and restrictions on the rights of the people to govern themselves There does not exist any division of citizens into "active and passive one, for in it, all citizens are active. It does not recognise any difference in rights as between men and women, residents and non-residents, propertied and propertyless, educated and uneducated. For in it, all citizens have equal rights. It is not property status, not national origin, not sex, not office, but personal ability and personal labour, that determines the position of every citizen in society"

Democracy in U. S. S. R

There are many reasons why we say that U S S R has perfect democracy There is universal suffrage for men and women The Constitution follows the principle of "one person, one vote." Every voter is eligible to be elected There is direct election to both Houses of the Supreme Soviet or Supreme Council. There is the system of voting by secret ballot. The Constitution provides for a system of periodical elections. The highest executive and administrative organ of the U. S. S. R. is the Council or Ministers and its members are elected by the federal legislature known as the Supremee Soviet The members of the Council of Ministers are responsible to the federal legislature Every citizen who is of age is entitled to any administrative and judicial job Even the judges of the Courts are elected in Russia Every citizen of the U. S. S. R. has a right to take part in the administration of the

country While all this is true, there are certain factors whose presence makes the Russian Constitution non-democratic The idea of democracy is to allow the people to think for themselves and express themselves both in speech and action But that is not so in the U S. S R The way of life prescribed by the Government is totalitarian. Every one must live a life whose pattern is laid down by the state This is hardly democratic The second anti-democratic element in the Constitution is the absence of the party system. There is only one party in Russia and that is the Communist Party of Russia. All other parties are banned The result is that there is no possibility of alternative government It is to be noted that in 1937, there was no contest at all in any one of the constituencies Their result is that there is the rule of one party only. The rule of one party is the antithesis of democracy.

6 The Constitution provides for the rights and duties of the citizens The Constitution does not confine itself "to stating the formal rights of citizens, but stresses the guarantees of these rights, the means by which these rights can be exercised. It does not merely proclaim equality of rights for citizens, but ensures it by giving legislative embodiment to the fact that the regime of exploitation has been abolished, to the fact the citizens have been emancipated from all exploitation It does not merely proclaim the right to work, but ensures it by giving legislative embodiment to the fact that there are no crises in Soviet society, and that un-employment has been abolished. It does not merely proclaim democratic liberties, but legislatively assures them by providing definite material resources" The rights guaranteed are the freedom of speech, freedom of the press, freedom of assembly including the holding of mass meetings, the freedom of street processions and demonstrations, the inviolability of the homes of citizens and privacy of correspondence, the right of asylum to foreign citizens who are persecuted for defending the interests of the working people or for their scientific activities or for their struggle for national liberation, the inviolability of the persons of citizens of the U S S R, the right to unite in public organisations such as trade unions, cooperative associations, youth organisations, sports and defence organisations, cultural, technical and scientific societies and also join the Communist

Party of the Soviet Union. The Constitution also recognises the right to work, the right to rest and leisure, the right to free and compulsory education, and the right to material security.

7. The Constitutions of 1918 and 1924 did not make any distinction between the legislative and executive functions of the state. There was no separation of powers Every organ was free to do whatever it pleased within its jurisdiction. The Constitution of 1936 is based on the principle of the separation of powers. The legislature is the Supreme Council and the legislative powers are exclusively given to it. The Council of Ministers is the "supreme executive and administrative organ of the state power." The Supreme Court of the U. S S. R. is the highest Court of the country. But it is to be noted that the recognition of the principle of separation of powers is only halting.

8. The Constitution of the U.S.S.R. is flexible. According to Article 146, the Constitution can be amended by a decision of the Supreme Soviet of the U S S. R. adopted by a majority of not less than two-thirds of the votes cast in each of its Chambers. It is to be noted that the Constitutions of 1918 and 1924 did not provide for any specific method of amendment of the Constitution. The Constitution was changed according to the needs of the circumstances. According to Webb, "Whether or not the All-Union Congress of Soviets is in session, there are always at work standing committees empowered to make without delay any alterations in any part of the Constitution affecting any section of the population in any part of the country that changing circumstances require"

9. The Russian system looks like the Cabinet system of England. The members of the Council of Ministers are responsible to the Supreme Soviet when it is in session and to the Presidium when the Supreme Soviet is not in session The legislature has the full power to appoint investigating and auditing commissions. But a critical examination of the system shows that its sacred heart is the dictatorship of Stalin and not a responsible and parliamentary Government.

10. In the case of Switzerland, the members of the Federal Council are elected by the federal legislature. Similarly, in the U. S. S. R. the members of the Council

of Ministers are also elected by the Supreme Soviet which is the federal Assembly.

11. In Switzerland, the laws passed by the Federal Assembly cannot be declared *ultra vires*. Similarly, the laws passed by the Supreme Soviet of the U. S. S R. cannot be declared *ultra vires* by the Courts. The Executive also has no control over them

12. Like Switzerland, the two chambers of the Supreme Soviet have equal powers There is no way to dissolve a deadlock between the two chambers except the dissolution of both the chambers

13 The position of the Presidium is unique in the Russian Constitution. This is so both with regard to its composition and functions.

14. The U S. S. R is a one-party state The only party which is recognised is the Communist Party of Soviet Russia. All other political parties are banned As a matter of fact, the Communist Party runs and controls the administration of the country.

15 The U S. S. R. is a federal state consisting of 16 Soviet Socialist Republics. There are also autonomous regions and national districts

As regards the division of powers between the Federal Government and the units, the former has authority over national defence, foreign affairs, foreign trade, national economic planning, taxation, transport and communication, money and credit, banks, social insurance, citizenship, administration of justice and civil and criminal law, etc The Federal Government has also the power to establish "basic principles" to be observed throughout the Union in education and public health The Constitutions of the Republics must conform to the federal Constitution In the case of a conflict between a federal law and a state law, the federal law is to prevail The Federal Cabinet known as the Council of Ministers contains members whose function is to control and coordinate the activities of certain departments in all the Republics. The Constitution can be amended by the Supreme Soviet by a two-thirds majority without consulting the units of the federation. The distribution of powers between the Federal Govern-

ment and the Units can be changed to any extent by the Supreme Soviet of the Union without the consent of the Units. No law passed by the Supreme Soviet can be declared *ultra vires* by the Courts The Communist Party controls all the work of all the departments of the Government, whether federal or republican. It is clear from all this that the Federal Government is very strong and practically. There is a unitary government. However, a few things must be noticed in this connection Every Republic has been given full freedom to leave the Union In 1944, a resolution was passed by the Supreme Soviet by which the Republics of the Soviet Union were given the power to establish autonomous relations with foreign countries and to have independent army units This implies that at least theoretically, the Units of the U S S R. have a voice in foreign affairs But it is difficult to say as to how far this power has been exercised by the Units in actual practice Moreover, the U. S. S. R. has demanded and got separate representation in the United Nations for two of its constituent Republics. The federal idea of equal representation of the Units has been recognised Thus, 25 deputies come to Supreme Soviet from each constituent Republic, 11 deputies from each autonomous Republic, 5 deputies from each autonomous provinces and 1 deputy from each national region, irrespective of their population and area.

Q 2. "The Constitution of the U S S R is unique and make a departure from the constitutions of the world" Discuss

Ans Please refer to the previous Question.

Q. 3 "The federal idea has been carried out fully in the Constitution of the U. S. S. R. Discuss.

Ans. Please refer to Q No 1.

Q 4. Discuss the constitution and powers of the Council of Ministers under the Soviet Constitution of 1936 ?

Ans. According to Article 64, the highest executive and administrative organ of state authority of the U. S. S R. is the, Council of Ministers Upto March 1946, the Council of Ministers was known as the Council of People's Commissars or the Sovnarkom. Most probably, the change was made in the title so that the Russian terminology may fit in with the generally accepted terminology of other countries

The members of the Council of Ministers are elected by Supreme Soviet in a joint Session The Supreme Soviet also elects the Chairman and the Vice-Chairman of the Council of Ministers, the Chairman of the State Planning Commission, Chairman of the Soviet Control Commission, Chairman of the Committee on Arts, the Chairman of the Committee on higher education and the Chairman of the Board of the State Bank It is to be noted that this system differs from other countries In England, the Prime Minister is selected by the King, but he is allowed to make a choice of his own colleagues. But in Russia, the Union Legislature elects not only the Chairman of the Council of Ministers, but also the other members of the Council of Ministers. The Chairman merely presides over the meetings of the ministers and has no over-riding authority over other ministers Russian system can be compared with the Federal Council of Switzerland In Russia, the Chairman of the Council of Ministers is known as "the Soviet Premier" The Chairman has exercised tremendous influence and power because this office has been occupied by some top men of the Communist Party This office has been held by great personalities like Lenin, Molotov and Stalin It is on account of their position in the Communist Party that these people wielded a great influcnce.

The Council of Ministers consists of 52 members. Formerely, the number used to be about 19 The following are the departments under the control of the Council of Ministers Defence, foreign affairs, foreign trade, railways, posts, telegraph and telephone, Maritime fleet, river fleet, coal-mining industries, electric power stations, electrical engineering industry, iron and steel industry, non-ferrous metals industry, chemical industry, air-craft industry, ship-building industry, munition industry, armaments industry, heavy machine-building

industry, navy, agricultural stocks, civil engineering industry and gellolose and paper industry. The following Union Republican Ministries are also under the control of the Council of Ministers: Food industry, fishing industry, meat and dairy produce industry, light industry, textile industry, timber industry, agriculture, state grain and livestock farms, finance, trade, internal affairs, state security, justice, public health, building materials industry and state control.

It is to be seen that the federal ministry directs the branches of national economy which are of national importance and they are administered from the Centre There is no duplication of ministries in the Constitutent Republics. Although the control of administrative work is centralised, its performance to a considerable extent is decentralised. In order to bring about collaboration in the work of the Centre and the units, the federal ministers maintain a representative at the capital of each Constituent Republic and each Constituent Republic has a representative at Moscow. The representative of a Republic has the right to sit with the federal ministers whenever any matter affecting his own Republic is under consideration.

A minister is considered to be a servant of the Soviet people, a pupil of Lenin, and an assistant of Stalin, and the director of his own department Molotov addressed the following remarks to the ministers in 1938 : 'We must remember that from the very beginning of its formation, the Council of People's Commissars was headed by Lenin and must aim at being worthy pupils of the great Lenin, who laid the foundations for our entire cause. We wish to be assistants of our teacher, the leader of the People's Soviet Union—the great Stalin. In all important questions, we, the Council of People's Commissars, will turn for advice and directions to the Central Committee of the Bolshevik party and, first of all, to comrade Stalin''. The ministers are not amateurs. They are experts and as such are fully acquainted with the affairs of their departments. The ministers who are also the members of the Politbureau have a hand in the policy making of the government. The other ministers are high technical advisors and

administrators whose duty is to carry out the will of the party.

The Council of Ministers issues decisions and orders on the basis and in pursuance of the laws in operation, and supervises their execution. Their decisions and orders are binding throughout the territory of U S. S. R.

According to Article 69, the Council of Ministers of the U S. S. R. has the right, in respect of those branches of administration and economy which come within the jurisdiction of U S S. R., to suspend decisions and orders of the Council of Ministers of the Union Republics and to annul their orders and instructions According to Article 71, the Government of the U. S S. R or a Minister of the U S S R to whom a question has been put by the Supreme Soviet of the U. S. S R must give a verbal or written reply within a period not exceeding three days. According to Article 73, the ministers of the U S S.R can issue, within the limits of the jurisdiction of their ministries, orders and instructions on the basis and in pursuance of the laws in operation, and also of the decisions and orders of the Council of Ministers of the U. S S R and supervise their execution.

As regards the actual working of the Council of Ministers, it is the most potent organ of the Soviet hierarchy, both in the legislative and administrative fields.

Q. 5 Write a critical note on the Presidium of the Supreme Soviet of the U. S S. R.

Ans The Presidium of the Supreme Soviet of the U S. S. R. is a "collective President" When the draft was being considered, it was proposed that the Chairman of the Presidium should be elected by the people and not by the federal legislature To this proposal, the reply of Stalin was in these words . "I think this amendment is wrong because it is not in conformity with the spirit of our Constitution According to the system of our Constitution, the U S S. R should not have an individual President elected by the entire population on an equal basis with the Supreme Soviet, who might essay to stand out against the Supreme Soviet. In the U. S S. R the President is a collective one—the Presidium of the Supreme Soviet which also includes the Chairman of the Presidium of the

Supreme Soviet, elected not by the entire population but by the Supreme Soviet and accountable to the Supreme Soviet. The experience of history shows that such a structure of the Supreme organs is the most democratic and ensures the country against undesirable contingencies."

According to Article 48, the Supreme Soviet of the U. S S R. at a joint sitting of both chambers elects the Presidium of the Supreme Soviet of the U S S R., consisting of a President of the Presidium, 16 Vice-Presidents, a Secretary of the Presidium and 24 members of the Presidium The Presidium is accountable to the Supreme Soviet of the U. S. S R for all activities Normally, the tenure of office of the Presidium is a little over four years The old Presidium continues so long as a newly elected Supreme Soviet does not elect a new Presidium But it is to be noted that on account of the World War II, the Presidium, which was elected in 1938 continued to hold office till March 194.

Since the conception of the Presidium is a "collective President", a Chairman of the Presid um is not expected to exercise any separate powers It is true that the laws of the Supreme Soviet are promulgated under his signature. It is also true that he receives the foreign envoys and signs the decrees of the Presidium. But it is to be noted that he always acts in the name of the Presidium Usually, he is regarded as the titular head of the U S. S R. in its relations with other states It is for this reason that he is sometimes called the Soviet President

The Secretary of the President counter-signs the laws which have been passed by the Supreme Soviet and also the decrees of the Presidium. Generally speaking, he is incharge of the Secretariat of the Presidium and disposes of the routine work

Some of the members of the Presidium are taken from the Politbureau and some from the high officers of the Red Army However, no person who is a member of the Council of Ministers, can be also a member of the Presidium The proceedings of the Presidium are not made public. The sessions are secret They are held many times a month. The Presidium is referred to as a daily working organ.

The powers of the Presidium are given in Article 49 of the Constitution. Those are the following —

1. The Presidium convenes the sessions of the Supreme Soviet of the U S S. R.

2 It issues decrees

3. It interprets laws of the U S. S. R. in force.

4 It dissolves the Supreme Soviet of the U S. S R on the strength of Article 47 of the Constitution and orders new elections According to Article 47, if there is disagreement between the two Houses of the Supreme Soviet, the question is to be referred for settlement to a Conciliation Commission formed on a parity basis. If the Conciliation Commission fails to arrive at an agreement, or if its decision fails to satisfy one of the chambers, the question is considered for a second time by the chambers. If the two chambers disagree once again, the Presidium of the Supreme Soviet has to order the dissolution of the Supreme Soviet of the U S S R

5 The Presidium conducts a general interrogation of the people (i e referendum) on its own initiative or on the demand of the Union Republics

6 It annuls decisions and ordinances of the Council of Ministers of the U S S R and of the Councils of Ministers of Union Republics in case they do not conform to law

7. In the period between the sessions of the Supreme Soviet of the U S S R, the Presidium relieves of their posts and appoints Ministers of the U S S R at the instance of the Chairman of the Council of Ministers of the U S S R with the subsequent submission for confirmation by the Supreme Soviet of the U. S S R

8. It institutes decorations and medals of the U S S. R and establishes titles of honour of the U S S R It awards decorations and medals of the U. S S R. and confers titles of honour of the U S. S. R It is to be noted that this is by far the widely exercised of all the prerogatives of the Presidisum. These titles and decorations are given to excellent performers in every conceivable type of work, to institutions, cities, enterpries, to units, men and officers of the Armed Forces and even to guerrilla fighters. New signs and symbols of distinctions, most of which cany also material rewards, are added constantly, and a special Department of Registry at the Secretariat of the Presidium keeps track of them Sometimes, the Presidium takes

away the titles and the decorations which have been awarded already.

9. The Presidium exercises the right of pardon.

10. It establishes military titles, diplomatic ranks and other special titles. In May 1941, the Presidium decreed the establishment of ranks of ambassador extraordinary and plenipotentiary, minister extraordinary and plenipotentiary and charge d'affaire in the Soviet diplomatic service In June 1943, the Presidium issued another decree which established 11 grades of the ambassadors, ministers, counsellors, secretaries and attaches.

11 The Presidium appoints and removes the higher commands of the Armed Forces of the U S S R

12 In the period between the sessions of the Supreme Soviet of the U S S R, the Presidium proclaims a state of war in the event of armed attack on the U. S S R. or whenever necessary to fulfil international treaty obligations concerning mutual defence against aggression.

13. The Presidium proclaims general or partial mobilization.

14 It ratifies and denounces international treaties. The treaties which have been published show that the text of ratification is signed by the Chairman of the Presidium of the Supreme Soviet and countersigned by the Minister of Foreign Affairs. The denunciation of a treaty is made by the ministry of foreign affairs in reliance on the decrees of the Presidium. The plenary powers to conclude treaties are subject to ratification and are issued under the signatures of the Chairman of the Presidium Most of the treaties are concluded in the name of the Presidium, particularly when they require ratification

15 The Presidium appoints and recalls plenipotentiary representatives of the U. S S. R. in foreign states.

16. It receives the credentials and letters of recall of diplomatic representatives of foreign states accredited to it.

17. It proclaims martial law in separate localities or throughout the U S. S. R. in the interest of the defence of U. S S. R or for the purpose of ensuring public order and state security.

It is to be noted that the Presidium of the Supreme Soviet, like the Presidium of the Central Executive Committee, has fulfilled the needs of a continuously operating body. It is one

of the highest organs of the state power. The Presidium of the Supreme Soviet has not only acted as the collective President of the Soviet State, but has in fact served to a large extent as a legislative organ in the Soviet structure.

Q. 6. Discuss the Soviet System in the U S S R.

Ans. An understanding of the system of administration in the U S S R. demands knowledge of the working of the Soviet system in that country The system of Soviets is fundamental in the Russian system The various Republics are called Soviet Republics Their Union is called the Soviet Union The entire structure of government is a heirarchy of Soviets According to Article 94 of the Stalin Constitution, the organs of state authority in territories, regions, autonomous regions, areas, districts, cities and rural localities are the soviets of the deputies of the working people. These Soviets are elected by the working people of the respective territories, regions, autonomous regions, areas, districts, cities or rural localities for a term of two years

A Soviet is a Council of delegates or deputies chosen by the workers employed in a factory, or soldiers in a regiment or by the peasants in a village or by any combination of such groups It is to be noted that there are no representatives of the capitalists, or landowners, etc. It is essentially and completely a body of the representatives of workers, peasants and soldiers These Soviets were not created by the Stalin Constitution Their origin may be traced to the Paris Commune of 1871. The Soviets did good work in Russia in 1905 when there was a revolution in that country They performed useful work in 1917. The system of the Soviets was developed and finalized in the course of time.

The Soviets play a very important role. They are the organs for the fulfilment of the ideals, and programme of the Communist Party. It is also through the Soviets that the working classes have been given a share in the administration of the country. It is rightly stated that the Soviets represent the highest form of proletarian democracy. Stalin has referred to the importance of the Soviets in these words : "In our Soviet

country, we must evolve a system of government that will permit us with certainty to anticipate all changes, to perceive everything that is going on among the peasants, the nationals, the non-Russian nations, and the Russians; the system of supreme organs must possess a number of barometers which will anticipate every change, register and forestall ..all possible storms and ill-fortunes. That is the Soviet system of government"

It is estimated that there are about 70,000 Soviets in the U. S. S R These Soviets are elected by the working people of the territories, regions, autonomous regions, areas, districts, cities or rural localities for a term of two years Formerly, many persons were excluded from the right of voting But the Constitution of 1936 gives the right to vote to everybody. Article 136 says that each citizen has one vote. Even women have been given the right to vote Even the soldiers of the army have been given the right to vote. The voting is direct and by secret ballot The Soviets of the working people direct the work of organs of administration subordinate to them, ensure the maintenance of public order, the observance of the laws and protection of the rights of the citizens, direct local economic and cultural organisation and development and draw up the local budgets. These Soviets adopt decisions and issue orders within the limits of the powers vested in them by the laws of the U. S. S. R and the Union Republic. The executive and administrative organs of the Soviets are the Executive Committees consisting of a Chairman, Vice-Chairman, a Secretary and members The executive and administrative organs of the Rural Soviets of the working people in small localities are the Chairman, the Vice-Chairman and the Secretary elected by them The executive organs of the local Soviets are directly accountable to the local Soviets and also to the executive organ of the superior Soviet

It is to be noted that the Soviets of the urban area are usually larger than those of the rural areas The urban Soviets make use of the Standing Comittee such as Finance Committee, education Committee, public health Committee, etc. The urban Soviet has a Presidium which consists of from 11 to 17 members Its work is to decide questions and carry on day

to day administration of the town. It is estimated that there are about 1,000 urban Soviets.

In addition to the local Soviets, there are Soviets at the higher level The highest Soviet is known as the Supreme Soviet or Supreme Council of the U S S R But in between the local Soviets and the Supreme Soviet, there lie the district Soviets, the Provincial Soviets, and the Republic Soviets They represent progressively larger population Formerly, the election to these Soviets used to be indirect But under the Stalin Constitution, the elections to these Soviets have become direct

The highest organ of State authority of a Union Republic is the Supreme Soviet of the Union Republic It is elected by the citizens of the Republic for a period of 4 years Its function is to adopt the Constitution of the Republic and also amend the same It confirms the Constitutions of Autonomous Republics forming part of it and defines the boundaries of their territories It approves the national economic plan and also the budget of the Republic It exercises the right of amnesty and pardon of citizens sentenced by the judicial organs of the Union Republics The Supreme Soviet of a Union Republic elects its Presidium consisting of a Chairman, Vice-Chairman, a Secretary and members The Supreme Soviet appoints the Council of Ministers of the Union Republic.

Q 7 Give a detailed account of the Communist Party of the U S S R

Ans According to Article 126 of the Stalin Constitution, the most active and politically most conscious citizens in the ranks of the working class and other sections of the working people join the Communist Party. This party is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organisations of the working people No study of the Russian Constitution can be complete without a discussion of the part which is played by the Communist Party. It is contended that the party

is the government in all except form and the Communist dictatorship is the dictatorship of the Communist Party. Stalin says: "The Party openly admits that it guides and gives the general directions to the government." It is to be noted that the Communist Party is the only party which is allowed to exist in the country. It is a compact and integrated body which is separate from the general mass of citizens It is purposely kept small so that a high standard of discipline may be maintained

The Communist Party is both a creed and a mechanism. It is a creed because its members believe in certain political and economic principles. Those principles are the principles of Marxism. The party believes in the destruction of capitalism It believes in the theory of class-war According to it, there can never be any friendship between the rich and the poor, the "haves" and "have-nots." The rich are the blood suckers and the poor are those who are the victims of the rich. Under the capitalist society, the rich grow richer and the poor grow poorer. The gulf of difference between the rich and the poor increases every day and there is no hope of peace so long as the capitalist system which is based on oppression and exploitation continues. The only way to set aside the capitalist system is by means of a bloody revolution in which will be practised all kinds of cruelties and tyrannies The state is the upholder of the capitalist system and the domination of the rich over the poor. The state maintains the *status quo* in the social and the economic spheres It is a misnomer to say that democracy is the government of the people, by the people, for the people It is really a rule of the bourgeoise If there is going to be justice in society, both the state and the capitalist system of society must be set aside. The Communist Party is fired with the zeal to end the tyranny of capitalism. Its members consider themselves to be the liberators of the oppressed people At the beginning, it was the policy of the Communist Party to spread revolutionary principles all over the world. This was particularly so during the period of Lenin and after the Russian Revolution of 1917. When Stalin came to power in 1924, he made a change in the policy of the Communist Party. The party was required to concentrate all its activities within the territory of the

U. S S. R. and not to meddle with the affairs of other countries. But it is to be noticed that during the last two years there is the revival of the old tradition The Communist Party is leaving no stone unturned to spread the revolutionary principles of Communism all over the world by means, fair or foul. The result is that country after country has been brought within the told of Communism.

The Communist party is a mechanism in the sense that it is geared in all of its parts to highly centralized control by a single compact group driving steadily towards an ultimate goal.

It is not easy to enter the Communist Party The person who is anxious to join it, must satisfy certain tests He must be possessed of a lot of zeal for Communism He must be a fanatic for the cause of the peasants and workers He must believe in the mission of the party and the rules of its discipline. He must believe in its methods of work. He must possess a large measure of fortitude He must secure recommendations from three or more persons who occupy a good position in the Communist Party He has to apply to the local branch of the party. That branch makes a searching inquiry into the qualifications of the aspirant to the party membership. But this is not all He has to serve a period of probation extending to 5 years He does not become a full member unless it becomes clear that he is not joining the party with any selfish or ulterior motive. He must not take wine. He should have no religion. He should not have any bourgeois mentality.

Admission to the Communist Party is difficult, but that is not true of leaving the party A person can leave it whenever he pleases If he becomes slack in his work, he is turned out. There is a constant scrutiny of the members of the party If any defect is found in any member, he is summarily dismissed.

The basic unit in the party organisation is a group of at least 3 members organised in a factory, mine, army, regiment, store, office, university, village or a collective farm. Formerly, the basic unit was known as a "cell". At present, it is known as "primary party organ." These

primary organs choose delegates of their party. These delegates make the party committees of the towns and rural districts. The latter elect the party committees of the Regions of provinces. The latter send representatives to the Party Congress in the Union Republic. The latter send delegates to the All-Union Congress. It is clear that the thread of responsibility and control remains unbroken from top to bottom. The superior organ has control over the inferior organ.

All-Union Congress

The All-Union Congress is the head of the whole party organisation. The rule of the party requires that this Congress must meet at least once in three years Theoretically, the All-Union Congress is the supreme authority in the party. It has the power to hear and approve of the reports of the other All-Union party organs, revise and amend the party programme and also decide the line of action which should be followed by the party with regard to the questions of current policy. The All-Union Congress is a cumbersome body. It consists of about 2,000 delegates Such a body is absolutely unsuitable for purposes of deliberation Moreover, this body meets after long intervals and consequently is absolutely unsuitable to conduct and guide the day to day work of administration and the party The result is that the All-Union Congress entrusts the work to different organs

Central Committee

The Congress appoints the Central Committee which guides the entire work of the party during the intervals of the Congress Its prestige is very high and whatever the Central Committee does is invariably approved by the All-Union Congress. It is rightly contended that the Central Committee and not the All-Union Congress is the supreme party authority. The Congress meets after many years and consequently all power and authority falls into the hands of the Central Committee If we examine critically the working of the Central Committee itself, we find that the real power is exercised by another ogan known as the Politbureau or the political bureau.

Auditing Committee

In addition to the appointment of the Central Committee, the All-Union Congress appoints an Auditing Committee. This Committee consists of 22 members. Their function is to audit the accounts of all the organisations of the Central Party. The Congress also appoints a Commission of Party Control. This Commission is the disciplinary arm of the party. Its business is to see that strict discipline is being maintained in the ranks of the party. This Commission has been described as "the collective keeper of the party conscience."

Politbureau

The Central Committee performs its functions through three organs. Those are the Politbureau or Political Bureau for political work, Orgbureau or Organisational Bureau for the general guidance of the organisational work and a Secretariat for current work of an organisational executive nature. But out of these three organs, the Politbureau is the most important.

As the directing organ of the leading party of the Comintern, the Politbureau exercised a dominant influence upon the tactics, policy and personnel of the former. Also, the Politbureau plays the role of judge and adjuster of jurisdictional conflicts and differences of opinion on projects and procedures between top officials of the state.

The function of the Orgbureau is the general direction of the various departments attached to the Central Committee "for the practical work of carrying out Party decisions." It is to adopt all those measures which are necessary to maintain the influence of the Party among the toiling people, the nationalities, women, youth, etc. It is to distribute the forces of the Communist Party in industry, agriculture, Soviet institutions, the Red Army, etc., in such a way that the Communist Party becomes strong.

The Secretariat

The Secretariat is appointed by the Central Committee. It consisted of four members in 1922. Since 1922, Stalin is

the head of the Secretariat as its Secretary-General. Its function is to keep a record of the work done by the various departments. In recent times, it has become the essential organ of the Party. The Politbureau and the Orgbureau have gone into the background All power is centred in the hands of the Secretary-General who is Stalin himself

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Q. 8. What are the fundamental rights and duties of citizens under the Russian Constitution of 1936 ?

Ans Fundamental Rights

(1) Chapter X of the Stalin Constitution deals with the fundamental rights and duties of the citizens of the U S. S. R. Article 118 provides that the citizens of the U. S S. R. have the right to work This means that they are guaranteed the right of employment and payment for their work in accordance with its quantity and quality The right to work is ensured by the Socialist organisation of the national economy, the steady growth of the productive forces of the Soviet Society, the elimination of the possibility of economic crises and the abolition of the unemployment One illustration is enough to show as to how the right to work is ensured When the World War II ended in 1945, a very large number of people released from the army. In order to employ them, the government used every kind of means to achieve its end. A law was passed that every demobilized soldier from the Soviet Army must be given work within one month of his arrival at home. The employers were also required to provide them with living accommodation.

(2) Article 119 provides that the citizens of the U. S. S. R. have the right to rest and leisure. The right to rest and leisure is ensured by the reduction of the working day to seven hours for the overwhelming majority of the workers, the institution of annual vacations with full pay for workers and employees and the provision of a wide net work of sanatoria, rest homes and clubs for the accommodation of the working people. Laws have been passed from time to time to lessen the number of working hours for the labourers. In 1947, it

was provided that the wage-workers were to work for eight hours a day. In the case of difficult work the working hours were reduced to seven or six hours a day. In the case of particularly arduous work, a working day was to be limited only to four hours. It is also to be noted that the trade unions have done a lot in helping the workers to have places of rest and leisure. It is said that in 1940, about 25 lakhs of workers spent their vacations at the rest homes.

(3) According to Article 120, all citizens have the right to maintenance in old age and also in case of sickness and loss of capacity to work. This right is ensured by the extensive development of social insurance of workers and employees at state expense, free medical service for the working people and the provision of a wide net-work of health resorts for the use of working people

(4) Article 121 provides that all the citizens of the U S S. R have the right to education This right is ensured by universal, compulsory elementary education All education is to be free of charge An overwhelming majority of students in the universities and colleges are given stipends by the state. The instruction in schools is given in the native language. Arrangements have also been made in the factories, state farms, machine and tractor stations and collective farms for free vocational, technical and agronomic training for working people. It is to be noted that in 1940, the government charged a tuition fee in the three senior classes of the secondary schools and the institutions of higher learning. In 1947, the Constitution was amended according to the law of 1940.

(5) Article 122 guarantees women of the U. S. S. R, equal rights with men in all spheres of economic, state, cultural, social and political life The possibility of exercising these rights is ensured to women by granting them an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, pre-maternity and maternity leave with full pay, and the provision of wide net-work of

maternity homes, nurseries and kinder-gartens.

It is to be noted that women play an important part in the U. S S R In 1946, 277 women were elected to the Supreme Soviet of the U S S R. There were also 1700 women in the Supreme Soviet of the Union and autonomous Republics About 2500 women work in research institutions Women are not allowed to work at night in factories, etc.

(6) Article 123 guarantees the equality of rights to citizens of the U S S. R , irrespective of their nationality or race, in all spheres of economic, state, cultural, social and political life Any direct or indirect restriction on the rights of, or, any establishment of direct or indirect privileges for citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.

(7) Article 124 guarantees the freedom of conscience to all citizens To ensure this, the Church in the U S S R. is separate from the state and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens It is to be noted that in U S S R. the birth, marriage and death certificates are is used by civil authorities and not by the Church. There are said to be about 30,000 religious congregations in the U S S R with some 8,000 Churches and mosques in regular use. In the U. S S. R , greater emphasis is put on the study of sciences than on religious dogmas.

(8) Article 125 guarantees the freedom of speech, freedom of the press, freedom of assembly including the holding of mass meetings and the freedom of street processions and demonstrations to all the citizens of the U S. S R. These civil rights are ensured by placing at the disposal of the working people and their organisations, printing presses, stocks of paper, public buildings, the streets, communications facilities and other material requisites for the exercise of those rights.

(9) Article 126 says that in conformity with the interests of the working people and in order to develop the organisational initiative and political activity of the masses of the people,

citizens of the U. S S R. are ensured the right to unite in public organisations These organisations are the trade unions, cooperative associations, youth organisations, sport and defence organisations, cultural, technical and scientific societies.

(10) Article 127 guarantees to all citizens the inviolability of the person No person can be placed under arrest except by a decision of a Court or with the sanction of a Procurator.

(11) Article 128 says that the inviolability of the homes of citizens and privacy of correspondence are protected by law.

(12) Article 129 says that the U S S R affords the right of asylum to foreign citizens who are persecuted for defending the interests of the working people, or for their scientific activities, or for their struggle for national liberation.

Fundamental Duties of the Citizens

1. If the people of the U. S S R are guaranteed a very large number of fundamental rights, they are also burdened with many duties. According to Article 130 it is the duty of every citizen of the U. S. S R to abide by the Constitution of the U. S S R to observe the laws, to maintain labour discipline, honestly to perform public duties, and to respect the rules of Socialist intercourse.

2 According to Article 131, it is the duty of every citizen to safeguard and strengthen public, socialist property as the sacred and inviolable foundation of the Soviet system, as the source of the wealth and light of the country, as the source of the prosperous and cultured life of all the working people. Persons committing offences against public, socialist property are the enemies of the people.

3. According to Article 132, universal military service is law. Military service in the Workers' and Peasants' Red Army is an honourable duty of the citizens of the U. S. S. R.

4. According to Article 133, it is the sacred duty of every citizen to defend the fatherland. Treason to the country is

punishable with all the severity of the law as the most heinous of crimes. Treason consists in the violation of the oath of allegiance, desertion to the enemy, impairing the military power of the state and espionage.

Q. 9 Describe the composition and powers of the Supreme Soviet of the U. S S. R

Ans The highest organ of the state authority of the U. S. S. R. is the Supreme Soviet of the U. S S R. The Supreme Soviet has replaced the All-Union Congress which existed before the inauguration of the Stalin Constitution. The old Congress was a unicameral body. It consisted of about 1500 members who were chosen by the Congresses of the several Republics This must have been a cumbersome body. It met for a short period after every two years. The unanimous opinion is that it was not an efficient body. The All-Union Congress lo ked like a mass meeting. Its main function was to hear the reports of the officers regarding the work done by them and pass resolutions on them It listened to the speeches of the Communist leaders regarding the achievements of the Communists in the various fields. The All-Union Congress was more an instrument of education and propaganda than a real legislative body. The Central Executive Committee was a bifuracted body. Its one branch consisted of person who were chosen by the Congress from its own membership. The second branch consisted of the nominees of the autonomous Republics and regions. The work of the Central Executive Committee was to carry on the work of the Federal Government between the sessions of the All-Union Congress. The Central Executive Committee exercised a great authoiity in the field of legislation and administration.

The Supreme Soviet of the U. S. S. R. which replaced the All-Union Congress, exercises all rights vested in the U S. S. R. by Aritcle 14 of the Constitution. Article 14 of the Constitution gives the following powers to the Federal Government :—

1. Representation of the Union in the international rela-

tions, conclusion aud ratification of treaties with other states.

2. Questions of war and peace.

3 Admission of new Republics into the U. S. S. R.

4 Control over the observance of the Constitution of the U S S R and assuring conformity of the Constitutions of the Union Republics with the Constitution of the U. S S R.

5 Confirmation of alterations of boundaries between the Union Republics.

6 Confirmation of the formation of new Territories and Regions and also of new Autonomous Republics within Union Republics.

7. Organization of the defence of the U S. S. R. and direction of all the armed forces of the U. S S. R.

8 Foreign trade on the basis of state monoply.

9. Safeguarding the security of the state.

10. Establishment of the national economic plans of the U. S. S R.

11. Approval of the single state budget of the U. S. S R. as well as of the taxes and revenues which go to the All-Union Republican and local budgets

12 Administration of the banks, industrial and agricultural establishments and enterprises and trading enterprises of all-Union importance

13. Administration of transport and communications.

14. Direction of the monetary and credit system.

15 Organisation of state insurance.

16. Raising and granting of loans.

17. Establishment of the basic principles for the use of land as well as for the use of natural deposits, forests and waters

18. Establishment of the basic principles in the interest of education and public health.

19. Organisation of a uniform system of national economic statistics.

20 Establishment of the principles of labour legislation.

21. Legislation on the judicial system and judicial procedure, criminal and civil codes.

22 Laws on citizenship of the Union ; laws and rights of foreigners

23 Issuing of all-Union acts of amnesty.

The working of the Supreme Soviete in actual practice shows that it has busied itself with the following things .—(1) amendment of the Constitution, (2) admission of the new territories and formation of new Republics of the U S S R, (3) passing of the budget, (4) confirmation of decrees adopted by the Presidium of the Supreme Soviet in between the sessions of the Supreme Soviet, (5) approval of reports on the foreign policy of the U S S R, and (6) the adoption of law on judicial structure, citizenship, ratification and renunciation of treaties, formation of commissions, etc.

The legislative powers of the U S.S R are exercised exclusively by the Supreme Soviet of the U S.S R. It has two chambers . The Soviet of the Rnion and the Soviet of Nationalities The Lower House is elected by the citizens of the U S S R. according to the electroal areas on the basis of one deputy for every three lakhs of people The Upper House is elected by the citizens of the various Units of the U S S.R. 25 deputies are sent by every Union Republic, 11 deputies by every Autonomous Republic, 5 deputies by every Autonomous Region and 1 deputy by every national area. The result is that White Russia and R.S F.S R have the same number of deputies. 292 deputies out of 574 in the Soviet of Nationalities represent the Autonomous Republics, Regions and Areas. Even the smallest national groups, such as the Koriaks and Evenks whose population is less than 13,000 and 6 000 respectively have the right to send 1 deputy each to the Soviet of Nationalities

The Supreme Soviet of the U S S.R. is elected for a period of four years, Both of its chambers have equal rights. They have an equal right to initiate legislation. The Russian

system follows the Swiss model. The law is considered adopted if passed by the both chambers of the Supreme Soviet of the U S S R. by a simple majority vote in each Chamber. Laws passed by the Supreme Soviet of the U.S S R. are published in the languages of the Union Republics over the signatures of the President and Secretary of the Presidium of the Supreme Soviet of the U S.S R. Sessions of both houses of the Supreme Soviet begin and terminate simultaneously These sessions are convened by the Presidium of the Supreme Soviet of the U S S R twice a year. Special sessions are convened by the Presidium at its discretion or on the demand of one of the Union Republics. If there is a disagreement between the two Chambers of the Supreme Soviet, the question is referred for settlement to a conciliation commission formed on a parity basis If the conciliation Commission fails to arrive at an agreement, or its decision fails to satisfy one of the Chambers, the question is considered for a second time by the Chambers Failing agreement between the two Chambers, the Presidium of the Supreme Soviet of the U S S R. dissolves and orders new elections

The Supreme Soviet of the U S S R. at a joint meeting of both the Chambers elects the Presidium of the Supreme Soviet of the U S S.R The Presidium is accountable to the Supreme Soviet for all its activities.

The Soviet of the Union which is the Lower House, elects its Chairman and Vice-Chairman The Soviet of Nationalities which is the Upper House, elects a Chairman of the Soviet of Nationalities and two Vice-Chairmen The Chairman of both the Houses preside over the sittings of their respective Chambers and direct the proceedings of those bodies

Both the Houses of the Supreme Soviet test the Credentials of the members of their respective chambers On the recommendation of the Credentials Commissions, the chambers decide either to endorse the credentials or to annul the election of the deputis econcerned.

The Supreme Soviet of the U.S S R., when it deems

necessary appoints commissions of enquiry and investigation on any matter. It is the duty of all institutions and public servants to comply with the demands of these Commissions and to submit to them the necessary materials and documents.

On the expiration of the term of office of the Supreme Soviet of the U.S.S.R. or in the event of its dissolution prior to the expiration of its term of office, the Presidium of the Supreme Soviet of the U.S S R. orders new elections to be held within a period not exceeding two months from the date of expiration of the term of office or dissolution of the U.S S.R. The newly elected Supreme Soviet of the U.S S R is convened by the out-going Presidium not later than one month after the election. The Supreme Soviet at a joint sitting of both chambers appoints the Government of the U S S R., namely, the Council of Ministers.

Q. 10. Explain the judicial system of the U. S S R.

Ans. Chapter IV of the Stalin Constitution deals with the judicial system of the U. S S R. According to it, justice in the U. S. S. R. is administered by the Supreme Court of the U S S. R , the Supreme Courts of the Union Republics, the Territorial and the Regional Courts, the Courts of the Autonomous Republics and the Autonomous Regions, the Area Courts, the Special Courts of the U. S. S R., established by the decision of the Supreme Soviet of the U S S R and the People's Courts. In all Courts, cases are tried with the participation of people's assessors. Judicial proceedings are conducted in the language of the Union Republic., Autonomous Republic or Autonomous Region. Persons not knowing the language are guaranteed every opportunity of fully acquainting themselves with the material of the case through an interpreter and likewise the right to use their own language in court. In all Courts of the U. S. S R., cases are heard in public, unless otherwise provided for by law, and the accused is guaranteed the right to be defended by counsel. Judges are independent and subject only to the law.

In all the Courts, the assessors participate along with the Judges except in those cases which are specially provided for by law. By the Law on the Judiciary which was adopted in 1938, two assessors sit with the Chairman of the Court or a member appointed by him, in cases tried for the first time. Appeal cases are reviewed by three members of the Court. The regular member of the Court acts as the presiding Judge. But this does not mean that the assessors do not enjoy equal rights. The assessors have equal rights on all matters and the decision is given by a majority vote All citizens who possess electoral rights are entitled to be elected as judges or assessors They can be removed by recall on the part of their electors or on the basis of a verdict in a Court in a criminal proceeding against them. It is to be noted that only those persons are elected judges who have some sort of legal training

Appeals

The decisions and verdicts of all the Courts, except the Supreme Courts of the U. S S R. and the Union Republics can be appealed by the accused or their representatives, or by the procurators. There are no Courts in the U. S S R whose function is exclusively appellate The case is sent to the higher Court for a review so that it may be found out whether the decision given by the lower Court is according to law and is supported by facts When a case is decided by a People's Court, the Regional, Territorial or Area Court above has the right of appeal Those cases which are tried for the first time by Regional, Territorial or Area Court are reviewed by the Supreme Court of the Union Republic If a case has been decided by the Supreme Court of the Union Republic in its original jurisdiction, its decision is final and cannot be appealed against. It is clear that ordinarily cases pass through only two judicial stages. Only in rare cases when it is clear that a wrong decision has been given inspite of the two stages, a case can be reviewed on the basis of a protest made by either the Procurator of the Union Republic, the Procurator-General, the Chairman of the Supreme Court of the Union Republic, or the Chairman of the Supreme Court of the U. S. S. R.

The Constitution provides that the Supreme Court of th. U. S S R is the highest judicial organ and is charged witl the supervision of the judicial activities of all the judicia organs of the U. S. S R and of the Union Republics The Supreme Court of the U. S. S. R and the special Courts of the U S. S R. are elected by the Supreme Soviet of the U. S. S. R. for a term of five years. The Supreme Courts the Union Republics are for a term of five years. The Supreme Courts of the Autonomous Republics are elected by their Supreme Soviets for five years. The Territorial and Regional of Courts, the Courts, of Autonomous Regions and the Area Courts are elected by the Territorial, Regional or Area Soviets of Working People's Deputies or by the Soviets of Working People's Deputies of the Autonomous Regions for a term of five years

People's Courts

People's Courts are elected by the citizens of the district on the basis of universal, direct and equal suffrage by secret ballot for a term of three years. They are essentially courts of original jurisdiction and they dispose of most of the civil and criminal cases. They deal with crimes against life, health liberty, property, taxes, military duty, labour, laws, etc. It is the Council of Ministers of the Union or the Autonomous Republic which decides as to how many People's Courts should there be in any locality The assessors serve on the People's Courts by turns for 10 days in a year The Judges of the Courts are required to report periodically to their electors regarding the work done by them.

In addition to the People's Courts, there are also the Courts of the areas, regions, autonomous regions and the republics. These Courts try both civil and criminal cases They also act as Courts of review for the cases tried by the People's Courts Each of these Courts consists of a chairman, Deputy Chairman, members and people's assessors

The Supreme Court of the Union Republic, is the highest judicial organ in a Union Republic. It exercises supervision over all the judicial organs working within its territory. This supervision is exercised by reviewing the protests of the Procurator General or Chairman of the Supreme Court c

the U. S. S. R. or the Procuractor or Supreme Court Chairman of the Union Republic against the verdicts, decisions or the judicial orders of the lower Courts. It can set aside the judgments and orders of the lower Courts It has also revisional jurisdiction in important civil and criminal cases.

There are also some Special Courts which operate in all parts of the Union. These Courts are the military tribunals, rail-road-transport Courts and water-transport Courts As a rule, two people's assessors take part in all these Courts along with the Judges.

Supreme Court of the U S S. R

As regards the Supreme Court of the U. S S. R., it is the highest judicial organ of the country. It supervises the judicial work in the whole of the country. This is done by reviewing the verdicts and the findings of the lower Courts on the protest of its own Chairman or the Procurator-General of the U S. S. R. It also reviews the decisions of the Special Courts of the U S. S. R. It acts as a Court of original jurisdiction in civil and criminal cases which are of very great importance. The Supreme Court has a Chairman, Deputy Chairman and members. At present, it has 68 Judges and 25 people's assessors. It has five divisions known as the criminal, civil, military, rail-road transport and water-transport collegia. When the Supreme Court sits as a Court of original jurisdiction, it consists of two people's assessors and a member of the Court. When it sits as a Court of review, it consists of three members of the Court. The Chairman of the Supreme Court of U. S. S. R. can preside over any sitting of any collegium of the Supreme Court. He has the right to remove any case from any Court of the U. S. S. R, or the Union Republic and put forward his findings before a full session nf the Supreme Court.

It is to be noted that the Supreme Court is a separate body whose function is the supervision of the judicial activities of all the judicial organs of the U S S R, and of the Union Republics. Its judges are declared to be "independent and subject only to the law." But this does not mean that the judges of the Supreme Court are unprejudiced people. "The independence of judges in examining concrete cases does not at all exclude the duty to follow the general policy of the government The judiciary is an organ of state power and therefore cannot be outside politics. The demand that the judiciary remain

outside of politics is no where and under no circumstances realized." According to Poliansky, "It it is self-evident that the independence of judges does not release them from the duty to obey political directives, which of course also cannot go against the Soviet Law that expresses the will of the people, the law-giver, directed to the dictatorship of the proletariat." Sychkov says: "The election of courts would immeasurably strengthen our judicial organs, would make the Soviet judiciary an even mightier instrument in the hands of the working class. The daily aid and attention paid to the Soviet judiciary by our government and by the nearest colleague of the great Stalin—by V. M Molotov personally—is a guarantee for that. The fact that we are led by the great Communist Party, its Central Committee and our wise, great, dear, and beloved comrade Stalin is a guarantee for that." The same writer says "The Soviet judiciary is an important and sharp weapon of the dictatorship of the working class in the cause of strengthening socialist construction and defending the conquests of the October Socialist Revolution. That is why it is the duty of all judicial officials, all local party and Soviet organs, properly to organise the organs of the judiciary, to improve their work, to select and advance for the judicial organs new, honest and devoted to the cause of socialism, Party and non-Party Bolsheviks." According to Kalinin, "the Supreme Court is under the eyes of the Central Committee of the Party and the Central Executive Committee of the U. S. S. R. and its decisions correspond fully to the party line." To quote the same writer again, "if a judge is a good Marxist, a dialectician, and experienced practical worker, a cultured, literate person, then it can be firmly said that 99 per cent of the verdicts and decisions would have positive political significance, would constitute one of the best forms of propaganda of Soviet laws, propaganda of the Party's directives If the judge is a poor Marxist who does not know the Party decisions and lets himself be led by local organisation, he is no good."

It is to be noted that the Supreme Court of the U. S. S. R. has no right to declare *ultra vires* the laws passed by the legislature. On the other hand, the Council of Ministers exercises a lot of influence. The Minister of Justice not only supervises the working of the law Courts, but also participates in the plenary sessions of the Supreme Court.